(23,802)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 651.

JOHN P. HERRMANN, APPELLANT,

vs.

BENJAMIN F. EDWARDS ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 19, 1913.

1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Benjamin F. Edwards, George Lane Edwards, the Fourth National Bank of St. Louis, the National Bank of Commerce in St. Louis, A. G. Edwards & Sons' Brokerage Co., Jas. W. Bell, W. K. Bixby, E. T. Campbell, Geo. O. Carpenter, L. R. Carter, H. Brookings Wallace, Samuel C. Davis, Harry Elliot, Edward A. Faust, E. F. Goltra, John A. Holmes, Sam M. Kennard, H. P. Knapp, F. Aug. Luyties, Jas. Campbell, Thos. H. McKittrick, Elias Michael, F. C. Orthwein, Clay Arthur Pierce, Tom Randolph, Chas. Rebstock, E. C. Simmons, W. D. Simmons, and W. S. Thompson, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court at Washington, D. C., thirty days from and after the day this Citation bears date, pursuant to an appeal taken in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein John P. Herrmann is appellant and you are appellees (whose names are above recited) to show cause, if any there be, why the judgment and decree rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done said appellant in that behalf.

Witness, the Honorable David P. Dyer Judge of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, this 7th day of July in the year of our Lord one thousand nine hundred and thirteen.

DAVID P. DYER,
United States Dist. Judge for the Eastern District of Missouri.

2 Service of within citation is hereby acknowledge- July 7, 1913.

EUGENE S. WILSON,
For William K. Bixby.
JEFFRIES & CORUM,
For George Lane Edwards, and A. G. Edwards and Sons' Brokerage Company.
H. S. PARISH,
For Benjamin F. Edwards.
GEO. L. EDWARDS,
For Louis Randolph.
F. A. LUYTIES,
W. S. THOMPSON,
CHAS. REBSTOCK,
THE NAT'L BANK OF COMMERCE IN ST. LOUIS,
XENOPHON P. WILFLEY,
Att'y for Harry Elliot.

A. & J. F. LEE,
For E. T. Campbell, E. C. Simmons and George O. Carpenter.
NAGEL & KIRBY,
Att'ys for E. A. Faust, H. P. Knapp, Samuel C. Davis, E. F. Goltra, and Thomas H. McKittrick, Defendants.
LEWIS & RICE,
Att'ys for L. R. Carter, H. Brookings Wallace, F. C. Orthwein, and Elias Michael.
F. A. CLINE,
Att'y for Defendant John A. Holmes.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I do hereby certify that on the 16th day of July, A. D., —, at St. Louis, Missouri, I executed this writ as follows: By serving the same on the within named defendants H. C. Pierce, James Campbell and Sam M. Kennard by leaving a copy hereof at each their usual places of abode with adult members of their respective families (servants), the said H. C. Pierce, James Campbell and Sam M. Kennard being temporarily absent.

EDW. F. REGENHARDT,
U. S. Marshal,
By J. J. McLAUGHLIN, *Deputy.*

3 services..	$6.00
5 miles....	.30
	$6.30

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I do hereby certify that on the 11th day of July A. D., 1913, at St. Louis, Mo., I executed this writ by delivering a true and correct copy thereof, as furnished by the Clerk, to the within named Jas. W. Bell, personally.

I do further certify that on the 22nd day of July A. D., 1913, I further executed this writ at St. Louis, Missouri, by serving the same on the within named The Fourth National Bank of St. Louis by delivering a true and correct copy thereof, as furnished by the Clerk, to Edward Hidden who is the President of the said The Fourth National Bank of St. Louis. Also by delivering a copy thereof for The Fourth National Bank to B. F. Edwards.

EDW. F. REGENHARDT,
U. S. Marshal,
By O. A. KNEHANS, *Deputy.*

2 services..	$4.00
2 miles....	.12
	$4.12

[Endorsed:] Marshal's Docket #1780. No. 4153. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. Herrmann vs. Edwards et al. Citation. Filed Jul- 22, 1913. W. W. Nall, Clerk. Return.

3 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

Be it remembered, that heretofore, to-wit: on the 10th day of March 1913 there was filed in the office of the Clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, a Bill of Complaint wherein John P. Herrmann is Plaintiff, and Benjamin F. Edwards and others are Defendants, No. 4153 in Equity, which said Bill of Complaint is in words and figures, as follows, to-wit:

(*Bill of Complaint.*)

4 In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity.

JOHN P. HERRMANN, Plaintiff,

v.

BENJAMIN F. EDWARDS, GEORGE LANE EDWARDS, THE FOURTH National Bank of St. Louis, The National Bank of Commerce of St. Louis, A. G. Edwards & Sons' Brokerage Co., Jas. W. Bell, W. K. Bixby, E. T. Campbell, Geo. O. Carpenter, L. R. Carter, H. Brookings Wallace, Samuel C. Davis, Harry Elliott, Edward A. Faust, E. F. Goltra, John A. Holmes, Sam M. Kennard, H. P. Knapp, F. Aug. Luyties, Jas. Campbell, Thos. H. McKittrick, Elias Michael, F. C. Orthwein, Clay Arthur Pierce, Tom Randolph, Chas. Rebstock, E. C. Simmons, W. D. Simmons, W. S. Thompson, Defendants.

Bill of Complaint in Equity.

To the Honorable the Judges of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, in equity:

Humbly complaining, showeth to your Honors and this Honorable Court in equity, your orator, the plaintiff, John P. Herrmann, respectfully submitting this Bill of Complaint against the defendants above named of a cause of action arising under the constitution and laws of the United States whereof the facts and circumstances are as follows:

5 1. Your orator, said plaintiff, is a citizen of the United States and of the State of Missouri and is (and has been at

all times herein mentioned) a resident of the Eastern Division of the Eastern Judicial District of Missouri; and he complains of the said defendants and of their acts respectively, in manner and form as hereinafter set forth, and avers that said individual defendants are all residents of the city of St. Louis in the Eastern Division of the Eastern Judicial District of Missouri, and that the National Bank of Commerce in St. Louis is an incorporated association duly organized, created and existing under the National Banking Laws of the United States, and has been, at all the times hereinafter mentioned and long before, domiciled in the city of St. Louis, where the banking office of said National Bank of Commerce in St. Louis is now and has been during the aforesaid time located and its business conducted; and said National Bank of Commerce in St. Louis is a resident of the State of Missouri and of said Eastern Division of the Eastern District of Missouri.

2. Plaintiff further states that he is now, and has been continuously since the year 1902, a stockholder in said National Bank of Commerce and that he now is the owner and holder of 100 shares of the capital stock thereof, having a par value of One Hundred Dollars each.

3. Your orator, the plaintiff, further states that the Fourth National Bank of St. Louis, was, from a date anterior to January 1st, 1906, and now is, an incorporated association organized under the National Banking laws of the United States, and was for many years until December, 1906, in active banking business in the city of St. Louis, Missouri, in which city its banking house was located, where it was authorized to do business under the National Banking laws of the United States.

4. The personal defendants, Benjamin F. Edwards, Jas. W. Bell, W. K. Bixby, E. T. Campbell, Geo. O. Carpenter, L. R. Carter, H. Brookings Wallace, Samuel C. Davis, Harry Elliott, Edward A. Faust, E. F. Goltra, John A. Holmes, Sam M. Kennard,
6 H. P. Knapp, F. Aug. Luyties, Jas. Campbell, Thos. H. McKittrick, Elias Michael, F. C. Orthwein, Clay Arthur Pierce, Tom Randolph, Chas. Rebstock, E. C. Simmons, W. D. Simmons and W. S. Thompson comprise the Board of Directors of the National Bank of Commerce in St. Louis at the present time and are in the management and control of the affairs of said association as a National Bank, and said National Bank of Commerce is now conducting, as it has for many years conducted, a general banking business in the city of St. Louis, while the Fourth National Bank of St. Louis aforesaid discontinued its active business in the manner hereinafter described, on or about December 11th, 1906, but has not surrendered its charter and yet is an incorporated banking association as aforesaid.

5. Your orator further states that defendant Benjamin F. Edwards is now and has been since the year 1908, President of the Board of Directors of said National Bank of Commerce and the A. G. Edwards & Sons Brokerage Company is and was at all times hereinafter mentioned a corporation incorporated under the laws of the State of Missouri and carrying on a general stock and bond

brokerage business in the city of St. Louis, and George Lane Edwards was a director in the National Bank of Commerce from a period anterior to June in the year 1906, until the 14th day of January, 1913, and a member of the Standing Committee on the State of bank of the said Board of Directors of the National Bank of Commerce in St. Louis.

Your orator further avers that said Benjamin F. Edwards and George Lane Edwards were during the years 1906 and 1907 members of a co-partnership, doing business as brokers and otherwise, in the city of St. Louis under the firm name of A. G. Edwards & Sons, who carried on business at the same place as the A. G. Edwards & Sons Brokerage Company aforesaid; and said George Lane Edwards was a stockholder and president of said Brokerage Company,

7 and said B. F. Edwards was during the years 1906 and 1907, and since then has been a stockholder in said brokerage Company, and that the stockholdings of said defendants Benj. F. Edwards and Geo. Lane Edwards in the Fourth National Bank in December, 1906, and prior thereto were in part held in the name of said brokerage firm or corporation, but nevertheless under the power and control of said two defendants.

6. Your orator, the plaintiff, further states, that, in the year of 1906, J. C. Vab Blarcom (who died about the year 1908) was the President of the National Bank of Commerce, and said Benjamin F. Edwards was its first Vice-President and Director and defendant Geo. Lane Edwards, a brother of defendant Benjamin F. Edwards, was also a Director and as such they occupied positions of confidence and trust in said bank towards its stockholders.

7. Your orator further states that Geo. Lane Edwards was and is, at all times herein mentioned, a stockholder and President of the A. G. Edwards & Sons Brokerage Company, and that Benjamin F. Edwards at all times herein ment-oned, was and is a stockholder in said A. G. Edwards & Sons Brokerage Company.

8. Your orator further avers that immediately, and for some time prior to December, 1906, Benjamin F. Edwards and Geo. Lane Edwards and Albert N. Edwards, brothers, each owned one-fifth of the capital stock of the A. G. Edwards & Sons Brokerage Company; that at said time, Benjamin F. Edwards and Geo. Lane Edwards, and Albert N. Edwards, and the Edwards Brokerage Company were the owners of or controlled or had, under their management thirty six hundred and sixty nine shares of stock in the Fourth National Bank of St. Louis, out of a total capital of ten thousand shares; that at said time, said Benjamin F. Edwards and J. C. Van Blarcom, Vice-President and President, respectively, of the National Bank of Commerce, were in the practical management and control

8 and at the head of the affairs of said National Bank of Commerce and that said defendants, Benjamin F. Edwards and George Lane Edwards, by reason of their stock, ownership and management aforementioned, were in control of and did control the Fourth National Bank aforementioned.

9. Your orator further states that on or about the 11th day of

December, 1906, said J. C. Van Blarcom and said Benjamin F. Edwards and George Lane Edwards caused to have written letters to the Fourth National Bank, purporting to have been authorized and sent to said Fourth National Bank by authority of the Board of Directors of the National Bank of Commerce; that said letters contained a proposition that the National Bank of Commerce offered to buy the assets and assume the liabilities of the Fourth National Bank for the sum of $2,450,000.00 and that if said proposition was accepted and the business of said Fourth National Bank was *turned* over to said National Bank of Commerce and all of the stockholders of said Bank would deliver their stock to said National Bank of Commerce on or before the 15th day of January, 1907, said National Bank of Commerce would pay to said stockholders of said Fourth National Bank the additional sum of $55.00 per share, or $550,000.00 for the good will of the business of the said Fourth National Bank, a total of $3,000,000.00, or $300.00 per share of said Fourth National Bank, and in said circular or letter it was stated that said J. C. Van Blarcom was then the holder of 6727 shares of the capital stock of said Fourth National Bank and that he pledged himself as a stockholder to vote in favor of said Fourth National Bank selling out to said National Bank of Commerce and requested the Board to accept the proposition.

10. Your orator further states that he is informed and believes that there are no records of the National Bank of Commerce, showing the authorization of any such proposition on behalf of the Bank by said Edwards or Van Blarcom, and he does not
9 know whether said National Bank of Commerce did or did not authorize said offer of purchase.

11. Your orator further avers that of the 6727 shares of Fourth National stock offered to be voted by said J. C. Van Blarcom, in favor of said sale that said Brokerage Company, Benjamin F. Edwards, Geo. Lane Edwards and Albert N. Edwards were the owners or in actual control of more than 3600 shares, and procured the assent of the remaining shares to be voted in favor of said transfer.

12. Your orator further states that said Edwards's were in control of said Fourth National Bank and had organized and formed its then Board of Directors, and said Board of Directors represented and were acting for said B. F. & G. Lane Edwards in this transaction and that said Board of Directors, under the control of said B. F. & G. Lane Edwards voted in favor of the acceptance of said proposition from said National Bank of Commerce on said December 11, 1906, and thereupon immediately turned over the entire assets and business of said Fourth National Bank to the National Bank of Commerce, and the books, assets, accounts, clerical force and everything connected with said Fourth National Bank (except a large amount of its deposits) were immediately, on December 11, 1906, and December 12, 1906, transferred over to the National Bank of Commerce, before the stockholders of said Fourth National Bank had had an opportunity to vote upon the Directors' action.

13. Your orator further states that the taking over of said Fourth National Bank by said National Bank of Commerce resulted in a loss of more than one million dollars to the said National Bank of Commerce, and that Benjamin F. Edwards and George Lane Edwards knew at and before the consummation that said transaction would result in an immediate loss of upwards of one million dollars to said National Bank of Commerce and that subsequent to the taking over of said Fourth National Bank, your orator is informed and believes that said National Bank lost not only the million
10 dollars aforementioned, but large sums in addition thereto, by reason of certain assets of said Fourth National Bank being worthless. Your orator does not know the exact amount of said losses sustained by said National Bank of Commerce by said transaction, but is informed and believes that the same resulted in a loss in excess of $1,400,000.00 to said National Bank of Commerce. The exact loss can only be obtained by an accounting on the part of the Bank of Commerce, for which accounting this plaintiff now asks in this suit.

14. Your orator further states, that at the time said Fourth National Bank was taken over by said National Bank of Commerce, at a price of $3,000,000.00 or $300.00 per share, that the value of said Fourth National Bank, to the National Bank of Commerce was a great deal less than said sum, and that said Benjamin F. Edwards and George Lane Edwards knew of these facts, but nevertheless, as Directors of said National Bank of Commerce, not only assented to said taking over, but actively negotiated and brought about the sale aforementioned.

15. Your orator further states that said Directors, Benjamin F. Edwards and George Lane Edwards, in this transaction were guilty of a breach of their trust as Directors of the National Bank of Commerce in this, that they did not exercise their authority and discretion for the good of said National Bank of Commerce, but on the contrary, the purpose of taking over the said Fourth National Bank was not for the benefit or the good or profit of said National Bank of Commerce, but for the profit, direct or indirect, to other individuals than the National Bank of Commerce. That said Benjamin F. Edwards, as first Vice-President, and Geo. Lane Edwards, as Director, of said National Bank of Commerce, assented and in being in control of and actively engaged in taking over said Fourth National Bank, either knew the conditions of said Fourth National Bank, or, if they were not acquainted with the affairs of the
11 Fourth National Bank, then they were guilty of a breach of trust in this, that they did not cause any investigation of the affairs of the Fourth National Bank on the part of the National Bank of Commerce before absorbing same.

16. Your orator further states that repeated demands have been made upon the Board of Directors of said National Bank of Commerce to bring suit against said Benjamin F. Edwards and George Lane Edwards for restitution for the losses incurred by said National Bank of Commerce by reason of taking over the Fourth National

Bank and that this plaintiff has made such demand, but said Board of Directors has failed and neglected to bring about any such restitution on the part of those responsible for said Fourth National deal or to take any appropriate measures thereof and he therefore brings this suit and makes said Directors and said National Bank of Commerce defendants herein and asks that the Directors and said defendant National Bank of Commerce render an accounting to plaintiff, and any who may join him, of the losses incurred as a result of the taking over of said Fourth National Bank by said National Bank of Commerce aforementioned, and that judgment herein be rendered against defendants Benjamin F. Edwards and George Lane Edwards in a sum, with interest, equal to the losses incurred by said National Bank of Commerce by reason of the taking over the Fourth National Bank as may be shown by said accounting on account of the breaches of trust on the part of said B. F. & G. Lane Edwards aforementioned and because said act was further unlawful as being in violation of the Statutes of the United States governing National Banking prohibiting one national bank purchasing another national bank.

17. The plaintiff, your orator, further respectfully repre-
12 sents that said Benjamin F. Edwards and George Lane Edwards were directly and pecuniarily interested in effecting the transfer of the assets and business of the Fourth National Bank of St. Louis to the National Bank of *St. Louis to the National Bank of* Commerce, aforesaid, and that under the terms and provisions of the National Banking Act of the United States, the acts and transactions of said defendants Benjamin F. Edwards and George Lane Edwards in the matter of the transfer of the assets and property of the Fourth National Bank to the National Bank of Commerce were contrary to the laws of the United States and beyond the powers, under the Acts of Congress in such case made and provided, of the National Bank of Commerce as an incorporated Banking Association under the laws of the United States, and that the acts and doings of the said Benjamin F. Edwards and George Lane Edwards in promoting, effecting and executing the transfer of the assets, and property of the Fourth National Bank, aforesaid, to the National Bank of Commerce were in violation of the National Banking laws of the laws governing said banking institutions, and were furthermore a breach of trust on the part of said Benjamin F. Edwards and George Lane Edwards as Directors of the Bank of Commerce, and the facts and circumstances of their interest in the Fourth National Bank as stockholders and otherwise render their action as directors in the National Bank of Commerce in St. Louis in promoting, effecting, and executing the transfer of the assets and property of the Fourth National Bank to the National Bank of Commerce, a breach of trust, in that said defendants, Benjamin F. Edwards and George Lane Edwards, as directors of the National Bank of Commerce in St. Louis, were, in duty bound to execute the trust which said office provided in such a manner as not to promote their own pecuniary and personal interest; and therefore their acts as aforesaid, were in
13 violation of the National Banking laws of the United States as well as contrary to equity and good conscience, and for

the consequences and damages resulting therefrom said Benjamin F. Edwards and George Lane Edwards were and are liable to the National Bank of Commerce for all damages ensuing on account thereof.

18. Your orator further alleges that the decision and determination of the rights of the parties hereto can only be reached by the proper interpretation and construction of the National Banking Laws of the United States under which both of the Banking Associations herein mentioned were organized and incorporated.

19. Your orator, the plaintiff, further showeth that said plaintiff was a shareholder in the said National Bank of Commerce in St. Louis at the time of all the transactions of which your orator, the plaintiff, herein complains, and that this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance; and that your orator the plaintiff, by letter, dated February 22, 1913, to the Board of Directors of said National Bank of Commerce, which letter was delivered to and read before said Board at a meeting thereof, February 25, 1913, did respectfully and earnestly request said National Bank of Commerce by its governing Board of Directors forthwith to institute appropriate proceedings to recover of Messrs. Benjamin F. Edwards and George Lane Edwards by civil suit the sum of One Million Three Hundred and Sixty-Three Thousand Nine Hundred and Sixty-Eight and 71/100 Dollars, which this Bank has lost by reason of breaches of trust and illegal acts on the part of said Messrs. Edwards, during the year 1906 and 1907, as directors of said National Bank of Commerce at that time, in the matter of the acquisi-
14 tion by said Bank of Commerce of the assets, business, stock and property of said Fourth National Bank of St. Louis; this plaintiff by said letter, assigning as the grounds of said request that said transaction was promoted and projected by said two directors, and executed and carried out in such a manner as to cause a loss to said Bank of Commerce of the sum above named and Six Per Cent interest thereon from that time, as would appear by the books and records of said Banks and therefore said plaintiff by said letter did request the prompt and immediate action of said Board of Directors of said Bank of Commerce by civil suit to recover of said two directors said amount for said breaches of trust and illegal acts for the use and benefit of said Bank of Commerce the facts and circumstances whereof (as said letter stated) appeared in the record and books of said Banks; but, that, notwithstanding plaintiff's said request, said National Bank of Commerce, by its said governing body, said Board of Directors thereof, has failed and omitted to take any such action as is and was so requested by plaintiff, and your orator, said plaintiff, has been informed and verily believes that said request of plaintiff has been referred to a Committee of the said Board without action thereon, although regular or stated meetings or sessions of said Board have been held, since such reference was made; and your orator, the plaintiff verily believes that said Bank of Commerce will

take no action in the direction requested by said letter of your orator, the plaintiff, and will not institute suit against said Messrs. Benjamin F. Edwards and George Lane Edwards for restitution of said sum or of any part thereof, wherefore your orator, this plaintiff, brings this suit for account of said Bank and for the benefit of all its stockholders; and only by the necessity existing (as above described) does he sue herein in his own name, but in so doing he invites said Bank of Commerce, and all other stockholders of said National Bank of Commerce to join and participate with him as parties
15 plaintiff upon the said stockholders sharing the expenses of the litigation necessary to enforce the rights of all stockholders in sais Bank of Commerce.

20. Wherefore, the premises considered, your orator, the plaintiff, humbly prays this Honorable Court to enter a decree herein requiring said Benjamin F. Edwards and George Lane Edwards, defendants, to render an account in full detail of the said transaction between the Fourth National Bank in St. Louis and the National Bank of Commerce in St. Louis, a full and complete discovery of all the details in said transaction as well as of the interests which each of said defendants respectively held in the year 1907 and in the year 1906 in said Fourth National Bank, together with an account of the loans which each of them had made upon pledge of stock of the Fourth National Bank in St. Louis as collateral therefor, whether such pledge was in the City of St. Louis or elsewhere, and whether held or standing in their or either of their names or in the name or names of others for them or either of them, and that your Honorable Court will further adjudge that the plaintiff for the use and benefit of the National Bank of Commerce recover of and from the defendants Benjamin F. Edwards and George Lane Edwards the sum of one million three hundred and sixty three thousand and nine hundred and sixty eight and 71/100 dollars together with interest thereon and to make such other orders touching the rights of the other defendants herein as may be proper, and in accordance with the facts herein stated; that the defendants, who are now directors of the National Bank of Commerce in St. Louis before this suit was brought, were duly requested and prayed by your orator, the plaintiff, and declined and omitted to institute proceedings for restitution of the amount for which said defendants Messrs. Benjamin F.
16 Edwards and George Lane Edwards are justly and equitably liable to said Bank of Commerce because of the acts and doings aforesaid, and that this Honorable Court will render such further decree and judgment herein and further orders as may be in accordance with equity and good conscience.

21. And may it please your Honors to grant unto your orator, the plaintiff, a writ of subpœna, issuing out of and under the seal of this Honorable Court to be directed to said defendants commanding them and each of them on a certain day and under penalty to appear before your Honors and this Honorable Court, and then and there full, true and perfect answer make, to all and singular the premises, and further, to, stand, to perform, and abide such further orders, direc-

tions and decree therein, as to your Honors shall seem meet and shall be agreeable to equity and good conscience.

(Signed) BARCLAY, FAUNTLEROY, CULLEN & ORTHWEIN,
" P. H. CULLEN,
" THOMAS T. FAUNTLEROY,
" WM. R. ORTHWEIN,
Solicitors and Counsellors for said Plaintiff.
(Signed) JOHN P. HERRMANN, *Plaintiff.*

CITY OF ST. LOUIS:

In the District Court of the United States for the Eastern Division, Eastern District of Missouri.

On this 10th day of March, 1913, before me personally appeared John P. Herrmann, the above named plaintiff, who made solemn oath that he had read the foregoing Bill of Complaint by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated upon information and belief and as to those matters be believes it to be true.

[SEAL.] W. W. NALL,
Clerk of the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

17 And thereupon, to-wit: on said 10th day of March 1913, there was issued out of the Clerk's office of said District Court a writ of subpœna in chancery directed to the said defendants, which said subpœna, together with the Marshal's return of service endorsed thereon, is in words and figures, as follows, to-wit:

(*Subpœna in Chancery.*)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, sct:

In the District Court of the United States in and for the Eastern Division of said District.

The President of the United States of America to Benjamin F. Edwards, George Lane Edwards, The Fourth National Bank of St. Louis, The National Bank of Commerce in St. Louis, A. G. Edwards & Sons Brokerage Company, Jas. W. Bell, W. K. Bixby, E. T. Campbell, Geo. O. Carpenter, L. R. Carter, H. Brookings Wallace, Samuel C. Davis, Harry Elliott, Edward A. Faust, E. F. Goltra, John A. Holmes, Sam M. Kennard, H. P. Knapp, F. Aug. Luyties, Jas. Campbell, Thos. H. McKittrick, Elias Michael, F. C. Orthwein, Clay Arthur Pierce, Tom Randolph, Chas. Rebstock, E. C. Simmons, W. D. Simmons, W. S. Thompson, Greeting:

You are hereby commanded to be and appear at the District Court of the United States, in and for the Eastern Division of the Eastern

Judicial District of Missouri, on March 30th 1913 next, at the City of St. Louis, then and there to answer the bill of complaint of John P. Herrmann, citizen of the State of Missouri, filed against you on the tenth day of March 1913: hereof fail not.

Witness, the Honorable David P. Dyer, Judge of the District Courts of the United States within and for the Eastern District of Missouri, the tenth day of March 1913.

Issued at Office, in the City of St. Louis, under the Seal of said District Court, the day and year last aforesaid.

[SEAL.] (Signed) W. W. NALL, *Clerk.*

18 Memorandum: The defendant is required to file answer or other defense in the Clerk's office on or before the twentieth day after service, excluding the day thereof; otherwise, the bill may be taken pro confesso.

W. W. NALL, *Clerk.*

(*Marshal's Return.*)

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I do hereby certify that in the City of St. Louis, Missouri, in the Eastern Judicial District of Missouri, on the 18th day of March, A. D., 1913, I executed this writ as follows:

By delivering a true and correct copy thereof together with a copy of the Bill in this cause, annexed, as furnished by the Clerk, to the within named defendant Benjamin F. Edwards, personally;

By serving the same on the within named defendant corporation The National Bank of Commerce of St. Louis by delivering a true and correct Copy of this writ to Benjamin F. Edwards who is the President of the said defendant corporation, The National Bank of Commerce in St. Louis;

By serving the same on the within named defendant corporation The Fourth National Bank of St. Louis by delivering a copy thereof as furnished by the Clerk, to Benjamin F. Edwards, who is the President of the National Bank of Commerce of St. Louis which absorbed the Fourth National Bank of St. Louis.

By delivering a true and correct copy of this writ to each of the within named defendants George Lane Edwards, James W. Bell, E. T. Campbell, L. R. Carter, and

By serving this writ on the within named defendant corporation the A. G. Edwards & Sons Brokerage Company by delivering a true and correct copy of this writ to George Lane Edwards who is the President of the said defendant corporation, the A. G. Edwards & Sons Brokerage Company, and who was in the business office of the said defendant corporation at the time of the said service and had charge thereof.

I do further certify that I further executed this writ in the Eastern Judicial District of Missouri, as follows;

On March 19th, 1910, by delivering a true and correct copy of this

writ to each of the within named defendants as follows:
19 W. S. Thompson, John A. Holmes, Sam M. Kennard, Thos. H. McKittrick, F. C. Orthwein, Tom Randolph, Chas. Rebstock and E. C. Simmons, each personally;

On March 20th, 1913, by delivering a true and correct copy of this writ to the within named defendant H. Brookings Wallace, personally.

I do further certify that the within named W. D. Simmons could not be found in the Eastern Judicial District of Missouri, after due and diligent search.

EDWARD F. REGENHARDT,
U. S. Marshal,
By O. A. KNEHANS, *Deputy.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Marshal's Return, Con'd.

I do further certify that at the City of St. Louis, Mo., in the Eastern Judicial District of Missouri I further executed this writ as follows:

On March 21st, 1913, by delivering a copy of this writ to the within named Elias Michael personally.

On March 24th, 1913, by delivering a copy of this writ to the within named defendants Geo. O. Carpenter, E. F. Goltra, and James Campbell, each personally;

On March 25th, 1913, by delivering a copy of this writ to the within named defendant Samuel C. Davis, personally;

On March 26th, 1913, by delivering a copy of this writ to the within named defendant H. P. Knapp, personally;

On March 28th, 1913, by delivering a copy of this writ to the within named defendant Clay Arthur Pierce, personally, and by leaving a copy thereof at the usual place of abode of the within named defendant F. August Luyties with an adult member of his family above the age of 16 years, the said F. August Luyties being temporarily absent.

On March 29th, 1913, by delivering a copy of this writ to the within named defendant Edward A. Faust, personally and by leaving a copy thereof at the usual places of abode of each of the within named defendants, W. K. Bixby and Harry Elliott, with
20 adult *mem-* members of their respective families, the said W. K. Bixby and Harry Elliott each being temporarily absent from their respective places of abode.

After due and diligent search the remaining defendants not found in the Eastern Judicial District of Missouri.

EDW. F. REGENHARDT,
U. S. Marshal,
By J. J. WILLIAMS, *Deputy.*

And afterwards, to-wit: on the 31st day of March 1913 there was filed a Motion to Dismiss by the defendants B. F. Edwards, George

Lane Edwards, and A. G. Edwards & Sons Brokerage Company, which said motion is in words and figures as follows, to-wit:—

21 (*Motion of B. F. Edwards, G. L. Edwards, and A. G. Edwards & Sons Brokerage Co. to Dismiss Suit.*)

No. 4153.

JOHN P. HERRMANN, Plaintiff,
vs.
BENJAMIN F. EDWARDS et al., Defendants.

Come now the defendants, Benjamin F. Edwards, George Lane Edwards, A. G. Edwards & Sons Brokerage Company, jointly and severally, and move the Court to dismiss this suit, for that, upon the face of the bill, this court has no jurisdiction of the subject matter of said suit, and for that the said bill does not state facts sufficient to constitute a valid cause of action in equity or at law, against them or either of them.

BOYLE & PRIEST,
Attorney- for said Defendants.

And afterwards, to-wit: on the 3rd day of April 1913 there was filed in said cause a Motion to Dismiss by the defendants Edward T. Campbell and Geo. O. Carpenter, which motion is in words and figures, as follows, to-wit:—

(*Motion of Edward T. Campbell and George O. Carpenter to Dismiss Suit.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4153.

JOHN P. HERRMANN, Complainant,
v.
B. F. EDWARDS et al., Defendants.

Now come the defendants, Edward T. Campbell and George O. Carpenter, jointly and severally, and move the Court to dismiss this suit, for the reasons, as appears upon the face of complainant's bill, (1), that this Court has no jurisdiction of the subject matter of said suit; (2), that the said bill does not state facts sufficient to constitute a valid cause of action in equity or at law against them, or either of them; and (3) that no judgment or other relief is asked
22 against them or either of them by said complainant.

A. & J. F. LEE,
Attorneys for said Defendants.

And afterwards, to-wit: on the 4th day of April 1913 there was filed in said cause a Motion to Dismiss by defendants H. P. Knapp, Samuel C. Davis, Edward F. Goltra, Thomas H. McKittrick and Edward A. Faust, which said motion is in words and figures, as follows, to-wit:—

(Motion of H. P. Knapp, Samuel C. Davis, Edward F. Goltra, Thomas H. McKittrick and Edward A. Faust to Dismiss Suit.)

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4153.

JOHN P. HERRMANN, Plaintiff,
v.
BENJAMIN F. EDWARDS et al., Defendants.

Motion of Defendants, H. P. Knapp, Samuel C. Davis, Edward F. Goltra, Thomas H. McKittrick and Edward A. Faust, to Dismiss.

Now come H. P. Knapp, Samuel C. Davis, Edward F. Goltra, Thomas H. McKittrick and Edward A. Faust, defendants in the above entitled cause, and jointly and severally pray this Honorable Court to dismiss the plaintiff's bill herein, and for grounds of this motion respectfully show:

1. That it appears from the face of the bill that each and all of the parties plaintiff and defendants are citizens and residents of the same State, and no ground of Federal jurisdiction is disclosed, so that this Court is without jurisdiction of the cause of action alleged in the bill.

2. That it appears from the face of the bill that there is a misjoinder of parties defendant and that these defendants are not necessary or proper parties to the cause of action therein alleged.

3. That the bill does not state facts sufficient to constitute a valid cause of action in equity against these defendants or either of them.

NAGEL & KIRBY,
Solicitors for said Defendants.

23 And afterwards, to-wit: on the 7th day of April 1913 there were filed in said cause a Motion to Dismiss by defendant E. C. Simmons, a Motion to Dismiss by defendants L. R. Carter, H. Brookings Wallace and F. C. Orthwein, and a Motion to Dismiss by defendant John A. Holmes; which said several motions to dismiss are, respectively, in words and figures, as follows, to-wit:—

(*Motion of E. C. Simmons to Dismiss Suit.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4153.

JOHN P. HERRMANN, Complainant,
vs.
B. F. EDWARDS, E. C. SIMMONS, et al., Defendants.

Motion to Dismiss on Behalf of Defendant E. C. Simmons.

Now comes the defendant, E. C. Simmons, and moves the Court to dismiss the suit, for the reasons, as appears upon the face of Complainant's bill, (1) that this Court has no jurisdiction of the subject matter of said suit; (2), that the said Bill does not state facts sufficient to constitute a valid cause of action in equity or at law against this defendant; and (3) that no judgment or other relief is asked against this defendant by said complainant.

A. & J. F. LEE,
Attorneys for said Defendant E. C. Simmons.

(*Motion of L. R. Carter, H. Brookings Wallace and F. C. Orthwein to Dismiss Suit.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4153.

JOHN P. HERRMANN, Plaintiff,
vs.
BENJAMIN F. EDWARDS et al., Defendants.

Motion to Dismiss Filed in Behalf of L. R. Carter, H. Brookings Wallace and F. C. Orthwein.

Now come the defendants, L. R. Carter, H. Brookings Wallace and F. C. Orthwein, jointly and severally, and move the Court to dismiss this suit upon the following grounds:

24 1. There is a mis-joinder of parties defendant and these defendants are neither necessary nor proper parties.

2. No judgment or other relief is asked against these defendants or any of them.

3. Upon the face of the bill this court has no jurisdiction of the subject matter of this suit.

4. The bill does not state facts sufficient to constitute a cause of action, in equity or in law, against these defendants, or any of them.

LEWIS AND RICE,
Solicitors for Said Defendants.

(*Motion of John A. Holmes to Dismiss Suit.*)

In the District Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity.

JOHN P. HERRMAN, Plaintiff,
against
BENJAMIN F. EDWARDS et al., Defendants.

Now comes the defendant John A. Holmes, above named, and moves this Honorable Court to dismiss this suit for the reason that upon the face of the plaintiff's bill, this court has no jurisdiction of the subject matter of this suit because said bill does not state facts sufficient to constitute a valid cause of action in equity, or at law, against this defendant.

FREDERICK A. CLINE,
Solicitor for Said Defendant, John A. Holmes.

And afterwards, to-wit: on the 9th day of April 1913 there were filed in said cause a Motion to Dismiss by defendant Elias Michael, and an Entry of Appearance on behalf of defendants George Lane Edwards and A. G. Edwards & Sons Brokerage Company; which said motion and which said entry of appearance are, respectively, in words and figures, as follows, to-wit:

25 (*Motion of Elias Michael to Dismiss Suit.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4153.

JOHN P. HERRMANN, Plaintiff,
vs.
BENJAMIN F. EDWARDS et al., Defendants.

Motion to Dismiss Filed in Behalf of Elias Michael.

Now comes the defendant Elias Michael and moves the Court to dismiss this suit upon the following grounds:

1. There is a mis-joinder of parties defendant and this defendant is neither a necessary nor proper party to the suit.
2. No judgment or other relief is asked against this defendant.
3. Upon the face of the bill this Court has no jurisdiction of the subject matter of this suit.
4. The bill does not state facts sufficient to constitute a cause of action, in equity or in law, against this defendant.

LEWIS AND RICE,
Solicitors for Said Defendants.

(*Entry of Appearance.*)

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity.

JOHN P. HERRMANN, Plaintiff,
vs.
BENJAMIN F. EDWARDS et al., Defendants.

Now come Sam. B. Jeffries and C. D. Corum, composing the law firm of Jeffries & Corum, and enter their appearance in the above entitled cause as attorneys of record for defendants, George Lane Edwards and A. G. Edwards & Sons Brokerage Company.

SAM B. JEFFRIES.
C. D. CORUM.

26 And afterwards, to-wit: on the 10th day of April 1913 there was filed in said cause a Motion to Dismiss by defendant W. K. Bixby, which said motion is in words and figures, as follows, to-wit:

(*Motion of W. K. Bixby to Dismiss Suit.*)

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4153.

JOHN P. HERRMANN, Plaintiff,
vs.
BENJAMIN F. EDWARDS et al., Defendants.

Motion of Defendant W. K. Bixby to Dismiss.

Now comes W. K. Bixby, defendant in the above entitled cause, and prays this Honorable Court to dismiss the plaintiff's bill herein, and for grounds of this motion respectfully shows:

1. That it appears from the face of the bill filed herein that each and all of the parties plaintiff and defendants are citizens of and residents of the same State, and no ground of Federal Jurisdiction is disclosed, so that this Court is without jurisdiction of the cause of action alleged in the bill.

2. That it appears from the face of the bill that there is a misjoinder of parties defendant and that this defendant is not a necessary or proper party to the cause of action therein alleged.

3. That the bill does not state facts sufficient to constitute a valid cause of action in equity against this defendant.

EUGENE S. WILSON,
Solicitor for Defendant W. K. Bixby.

And afterwards, to-wit: on the 5th day of May 1913 the following proceedings were had and appear of record in said cause, as follows, to-wit:

27 (*Order Dismissing Bill.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4153. In Equity.

JOHN P. HERRMANN, Plaintiff,
vs.
BENJAMIN F. EDWARDS et al., Defendants.

Now at this day come the parties hereto by their respective solicitors and argue and submit to the Court the several motions of the said defendants to dismiss the bill of complaint in this cause; upon due consideration whereof, the Court Doth

Order that the bill of complaint in this cause, be, and the same is hereby dismissed for want of jurisdiction at the costs of the said complaint; to which ruling of the Court the said complainant excepts and is allowed an exception.

May 5th, 1913.

DAVID P. DYER, *Judge.*

And afterwards, to-wit: on the 9th day of May 1913 there was filed by said plaintiff in said cause a Motion for leave to file an Amended Bill of Complaint, which said motion is in words and figures, as follows, to-wit:

(*Motion for Leave to File Amended Bill of Complaint.*)

28 In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4153.

JOHN P. HERRMANN, Plaintiff,
vs.
BENJAMIN F. EDWARDS et al., Defendants.

Motion of Plaintiff for Leave to File Amended Petition.

Now comes plaintiff, by his solicitors and Counsel, and moves the court to set aside the order herein sustaining motions of defendants to dismiss and to grant to plaintiff leave to file an amended bill of complaint herein which will be submitted to the Court, upon this motion; and this leave to amend is prayed by plaintiff because said plaintiff desires to add certain other allegations of fact to those

contained in the original bill and to amend same in several particulars as shown therein, in order that the fullest possible exhibit thereof may be made to the Court for further consideration thereof.

BARCLAY, FAUNTLEROY,
CULLEN & ORTHWEIN,
SHEPARD BARCLAY,
Solicitors and of Counsel for Plaintiff.

Which said proposed Amended Bill of Complaint as lodged with but not filed by the Clerk is in words and figures, as follows, to-wit:

29 (*Amended Bill of Complaint.*)

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4153.

JOHN P. HERRMANN, Plaintiff,
v.
BENJAMIN F. EDWARDS, GEORGE LANE EDWARDS, THE FOURTH National Bank of St. Louis, The National Bank of Commerce in St. Louis, A. G. Edwards & Sons Brokerage Co., Jas. W. Bell, W. K. Bixby, E. T. Campbell, Geo. O. Carpenter, L. R. Carter, H. Brookings Wallace, Samuel C. Davis, Harry Elliot, Edward A. Faust, E. F. Goltra, John A. Holmes, Sam M. Kennard, H. P. Knapp, E. Aug. Luyties, Jas. Campbell, Thos. H. McKittrick, Elias Michael, F. C. Orthwein, Clay Arthur Pierce, Tom Randolph, Chas. Rebstock, E. C. Simmons, W. D. Simmons, W. S. Thompson, Defendants.

(*Amended Bill of Complaint in Equity.*)

To the Honorable the Judges of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, in Equity:

Humbly complaining, showeth to your Honors and this Honorable Court in Equity, your orator, the plaintiff, John P. Herrmann, respectfully submitting this his amended Bill of Complaint against the defendants above named of a cause of action arising under the constitution and laws of the United States whereof the facts and circumstances are as follows:

1. Your orator, said plaintiff, is a citizen of the United States and of the State of Missouri and is (and has been at all times
30 herein mentioned) a resident of the Eastern Division of the Eastern Judicial District of Missouri; and he complains of the said defendants and of their acts respectively, in manner and form as hereinafter set forth, and avers that said individual defendants are all residents of the City of St. Louis in the Eastern Division of the Eastern Judicial District of Missouri, and that the

National Bank of Commerce in St. Louis is an incorporated association duly organized, created and existing under the National Banking laws of the United States, and has been, at all the time hereinafter mentioned and long before, domiciled in the City of St. Louis, where the banking office of said National Bank of Commerce in St. Louis is now and has been during the aforesaid time located and its business conducted; and said National Bank of Commerce in St. Louis is a resident of the State of Missouri and of said Eastern Division of the Eastern Judicial District of Missouri.

2. Plaintiff further states that he is now, and has been continuously since the year 1902, a stockholder in said National Bank of Commerce and that he now is the owner and holder of 100 shares of the capital stock thereof, having a par value of One Hundred Dollars each.

3. Your orator, the plaintiff, further states that the Fourth National Bank of St. Louis, was, from a date anterior to January 1st, 1906, and now is, an incorporated association organized under the National Banking Laws of the United States, and was for many years until December, 1906, in active banking business in the City of St. Louis, Missouri, in which City its banking house was located, where it was authorized to do business under the National Banking Laws of the United States.

4. The personal defendants, Jas. W. Bell, W. K. Bixby, E. T. Campbell, Geo. O. Carpenter, L. R. Carter, H. Brookings Wallace, Samuel C. Davis, Harry Elliott, Edward A. Faust, E. F. Goltra, John A. Holmes, Sam M. Kennard, H. P. Knapp, F. Aug. Luyties, Jas. Campbell, Thos. H. McKittrick, Elias Michael, F. C. Orthwein, Clay Arthur Pierce, Tom Randolph, Chas. Rebstock, E. C.
31 Simmons, W. D. Simmons, and W. S. Thompson comprise the Board of Directors of the National Bank of Commerce in St. Louis at the present time and are in the management and control of the affairs of said association as a national bank, and said National Bank of Commerce is now conducting, as it has for many years conducted, a general banking business in the city of St. Louis, while the Fourth National Bank of St. Louis aforesaid discontinued its active business in the manner hereinafter described, on or about December 11, 1906, but has not surrendered its charter and yet is an incorporated banking association as aforesaid;

5. Your orator further states that defendant Benjamin F. Edwards until May, 1913, and prior thereto since the year 1908, has been president of the Board of Directors of said National Bank of Commerce and the A. G. Edwards & Sons Brokerage Company is and was at all times hereinafter mentioned a corporation incorporated under the laws of the State of Missouri and carrying on a general stock and bond brokerage business in the City of St. Louis, and George Lane Edwards was a director in the National Bank of Commerce from a period anterior to June in the year 1906, until the 14th day of January, 1913, and a member of the Standing Committee on the State Bank of the said Board of Directors of the National Bank of Commerce in St. Louis, which Committee was desig-

nated by the said Board for administrative purposes in the management of said Bank.

Your orator further avers that said Benjamin F. Edwards and George Lane Edwards were during the years 1906 and 1907 members of a co-partnership, doing business as brokers and otherwise, in the City of St. Louis under the firm name of A. G. Edwards & Sons, who carried on business at the same place as the A. G. Edwards & Sons Brokerage Company aforesaid; and said George Lane Edwards was a stockholder and president of said brokerage company, and said B. F. Edwards was during the years 1906 and 1907, and since then has been a stockholder in said brokerage Company, and that the stockholdings of said defendants Benj. F. Edwards and
32 George Lane Edwards in the Fourth National Bank in December, 1906, and prior thereto, were in part held in the name of said brokerage firm or corporation but nevertheless under the power and control of said two defendants;

6. Your orator, the plaintiff, further states, that, in the year 1906, J. C. Van Blarcom (who died about the year 1908) was the President of the National Bank of Commerce, and said Benjamin F. Edwards was its first Vice-President and Director and defendant Geo. Lane Edwards, a brother of defendant Benjamin F. Edwards, was also a Director and as such they occupied positions of confidence and trust in said Bank towards its stockholders.

7. Your orator further states that Geo. Lane Edwards was and is, at all times herein mentioned, a stockholder and President of the A. G. Edwards & Sons Brokerage Company, and that Benjamin F. Edwards at all times herein mentioned, was and is a stockholder in said A. G. Edwards & Sons Brokerage Company.

8. Your orator further avers that immediately, and for some time prior to December, 1906, Benjamin F. Edwards and Geo. Lane Edwards and Albert N. Edwards, brothers, each owned one-fifth of the capital stock of the A. G. Edwards & Sons Brokerage Company; that at said time, Benjamin F. Edwards and Geo. Lane Edwards, and Albert N. Edwards, and the Edwards Brokerage Company were the owners of or controlled or had, under their management thirty six hundred and sixty nine shares of stock in the Fourth National Bank of St. Louis, out of a total capital of ten thousand shares; that at said time, said Benjamin F. Edwards and J. C. Van Blarcom, Vice-President and President, respectively of the National Bank of Commerce, were in the practical management and control and at the head of the affairs of said National Bank of Commerce and that said defendants, Benjamin F. Edwards and Geo. Lane Edwards, by reason of their stock, ownership, and management aforementioned, were in control of and did control the Fourth National Bank aforementioned.

9. Your orator further states that on or about the 11th day of December, 1906, said J. C. Van Blarcom and said Benja-
33 min F. Edwards and George Lane Edwards caused to have written letters to the Fourth National Bank, purporting to have been authorized and sent to said Fourth National Bank by authority of the Board of Directors of the National Bank of Com-

merce; that said letters contained a proposition, that the National Bank of Commerce offered to buy the assets and assume the liabilities of the Fourth National Bank for the sum of $2,450,000.00, and that if said proposition was accepted and the business of said Fourth National Bank was turned over to said National Bank of Commerce and all of the stockholders of said Bank would deliver their stock to said National Bank of Commerce on or before the 15th day of January, 1907, said National Bank of Commerce would pay to said stockholders of said Fourth National Bank the additional sum of $55.00 per share, or $550,000.00 for the good will of the business of the said Fourth National Bank, a total of $3,000,000.00, or $300.00 per share of said Fourth National, and in said circular or letter it was stated that said J. C. Van Blarcom was then the holder of 6,727 shares of the capital stock of said Fourth National Bank and that he pledged himself as a stockholder to vote in favor of said Fourth National Bank selling out to said National Bank of Commerce and requested the Board to accept the proposition.

10. Your orator further states that he is informed and believes that there are no records of the National Bank of Commerce showing the authorization of any such proposition on behalf of the Bank by said Edwards or Van Blarcom, and he does not know whether said National Bank of Commerce did or did not authorize said offer of purchase.

11. Your orator further avers that of the 6,727 shares of Fourth National stock offered to be voted by said J. C. Van Blarcom, in favor of said sale, that said Brokerage Company, Benjamin F. Edwards, Geo. Lane Edwards and Albert N. Edwards were the owners or in actual control of more than 3,600 shares, and procured the assent of the remaining shares to be voted in favor of said transfer.

34 12. Your orator further states that said Messrs. Edwards defendants were in the control of said Fourth National Bank and had organized and formed its then Board of Directors, and said Board of Directors represented and were acting for said Benjamin F. Edwards and George Lane Edwards in this transaction and that said Board of Direc*ot*-s, under the control of said Benjamin F. Edwards and Geo. Lane Edwards voted in favor of the acceptance of said proposition from said National Bank of Commerce on said Dec. 11, 1906, and thereupon immediately turned over the entire assets and business of said Fourth National Bank to the National Bank of Commerce, and the books, assets, accounts, clerical force, and everything connected with said Fourth National Bank (except a large amount of its deposits) were immediately, on December 11, 1906, and December 12, 1906, transferred over to the National Bank of Commerce, before the stockholders of said Fourth National Bank had had an opportunity to vote upon the Directors' action, and without and beyond any lawful power or authority in said Bank of Commerce so to do, under the National banking laws of the United States at that time, which laws furnished then and there the only warrant, power or authority for any action by said Bank of Commerce, so that said transfer then was and ever since has been illegal

and unlawful and beyond the powers of said Bank of Commerce under the laws of the United States which laws confer the only powers which said Bank of Commerce then might or now may exercise;

Your orator, said plaintiff, further avers that neither said Fourth National Bank nor said Bank of Commerce had any other powers than those conferred upon them by the laws of the United States as corporations organized and incorporated under the National Banking laws of the United States, and that said laws did not then or at any time authorize or empower either of said Banks to engage in or carry out the said transaction by means of which the said assets and other property of the Fourth National Bank were transferred to said National Bank of Commerce in 1906, and in which
35 transaction said Benjamin F. Edwards and George Lane Edwards defendants instigated, advised, counselled and assisted the said Banking corporations (defendants) to execute said illegal transfer, which transfer, as your orator is advised and verily believes and charges, was in violation of the National Banking laws of the United States, as well as a breach of trust on the part of the directors consenting, thereto, especially of said defendants, Edwards, who at the time were Directors of the National Bank of Commerce, as well as pecuniarily interested as stockholders and otherwise in the Fourth National Bank, by reason of which relationship to the latter Bank said Messrs. Edwards, defendants, derived a large personal profit and advantage from said breach of their trust as directors of the National Bank of Commerce, in permitting, advising, aiding, abetting, counseling and assisting in said transfer of the said assets of said Fourth National Bank to said Bank of Commerce.

13. Your orator further states that the taking over of said Fourth National Bank by said National Bank of Commerce as aforesaid resulted in a direct loss of more than one million dollars to the said National Bank of Commerce, and that said Benjamin F. Edwards and Geo. Lane Edwards defendants knew at and before the consummation thereof that said transaction would result in a loss of upwards of one milli-n dollars to said National Bank of Commerce or by the exercise of reasonable care and caution on their part at the time might have known thereof; and, subsequent to the taking over of said Fourth National Bank, its assets and business, your orator is informed and believes, and hence avers that said National Bank of Commerce lost thereby and as a direct consequence thereof, not only the million dollars aforementioned, but large sums in addition thereto, by reason of certain assets of said Fourth National Bank being worthless, although classified by said Fourth National Bank in its accounts theretofore, and at the time of said transfer, as having a large value. Your orator does not know the exact amount of said losses sustained by said National Bank of Commerce by said transaction, but is informed and believes that the same
36 resulted in a loss in excess of $1,400,000.00 to said National Bank of Commerce. The exact loss can only be obtained by an accounting on the part of the Bank of Commerce, for which accounting this plaintiff prays in this suit, as part of the relief nec-

essary to full and adequate remedy herein; and your orator avers that under the laws of the United States and under the powers thereby conferred on said Bank of Commerce and said Fourth National Bank, the action of said directors, Messrs. Benjamin F. Edwards and George Lane Edwards, in instigating, advising, abetting and assisting in executing the said transfer of the assets and stock of the Fourth National Bank to said Bank of Commerce was a breach of trust on their part as directors in and of the latter Bank for which they are justly and equitably liable to plaintiff and the other stockholders of said Bank who have been greatly injured and damaged thereby;

14. Your orator further states, that at the time said Fourth National Bank was taken over by said National Bank of Commerce, at a price of $3,000,000.00 or $300.00 per share, that the value of said Fourth National Bank to the National Bank of Commerce was a great deal less than said sum, and that said Benjamin F. Edwards and George Lane Edwards knew of these facts, but nevertheless, as Directors of said National Bank of Commerce, not only assented to said taking over, but actively negotiated, aided and brought about the sale aforementioned, and thereby inflicted on the stockholders of said Bank of Commerce, the serious loss aforesaid;

15. Your orator further states that said Directors, Benjamin F. Edwards and Geo. Lane Edwards, in this transaction were guilty of a breach of their trust as Directors of the National Bank of Commerce in the particulars aforesaid, and in aiding and abetting in the acquisition of the stock, assets and property of the said Fourth National Bank by said Bank of Commerce, and in aiding and abetting in the securing and gathering, in possession of said J. C. Van Blarcom, as aforesaid, the shares of stock in said Fourth
37 National Bank (over 6,000 in number) which were acquired and held by said Van Blarcom, in trust and for account of said Bank of Commerce (in December, 1906, and in the early part of 1907) as part of the plan of said defendants Edwards to carry out the said transaction, which was and remains illegal and contrary to the spirit and intent of the National Banking laws of the United States; and said defendants Edwards in so promoting, aiding and abetting said transaction and transfer were guilty of a further breach of trust as such directors of said Bank of Commerce in this, that they did not exercise their authority and discretion for the good of said National Bank of Commerce, but on the contrary, the purpose of taking over the said Fourth National Bank was not for the benefit or the good or profit of said National Bank of Commerce, but for the profit, direct or indirect, to other individuals than the National Bank of Commerce. That said Benjamin F. Edwards, as first Vic- President and Geo. Lane Edwards, as Director, of said National Bank of Commerce, assented and in being in control of and actively engaged in taking over said Fourth National Bank, either knew the conditions of said Fourth National Bank, or, if they were not acquainted with the affairs of the Fourth National Bank, then they were guilty of a breach of trust in this, that they did not cause any sufficient investigation of the affairs of the Fourth National Bank on the part of the National Bank of Commerce before absorbing same, and were

guilty of gross negligence in respect of ascertaining its true condition.

16. Your orator further states that repeated demands have been made upon the Board of Directors of said National Bank of Commerce to bring suit against said Benjamin F. Edwards and Geo. Lane Edwards for restitution for the losses incurred by said National Bank of Commerce by reason of taking over the Fourth National Bank and that this plaintiff has made such demand, but said Board of Directors has failed and neglected to bring about any such restitution on the part of those responsible for said Fourth National deal or to take any appropriate measures therefor and he therefore brings this suit and makes said Directors and said National Bank of Commerce defendants herein and asks that the Directors and said defendant National Bank of Commerce and said Fourth National Bank render an accounting to said Plaintiff, and any who may join him, of the losses incurred as a result of the taking over of said Fourth National Bank by said National Bank of Commerce aforementioned, and that judgment herein be rendered against defendants Benjamin F. Edwards and George Lane Edwards in a sum, with interest, equal to the losses incurred by said National Bank of Commerce by reason of the taking over the Fourth National Bank as may be shown by said accounting on account of the breaches of trust on the part of said Benjamin F. and George Lane Edwards aforementioned and because said act was further unlawful as being in violation of the Statutes of the United States governing National Banking prohibiting one national bank purchasing another national bank or its capital stock as an investment.

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17. The plaintiff, your orator, further respectfully represents that said Benjamin F. Edwards and George Lane Edwards were directly and pecuniarily interested in effecting the transfer of the assets and business of the Fourth National Bank of St. Louis to the National Bank of Commerce, aforesaid, and that under the terms and provisions of the National Banking Act of the United States, the acts and transactions of said defendant- Benjamin F. Edwards and George Lane Edwards in the matter of the transfer of the assets and property of the Fourth National Bank to the National Bank of Commerce were contrary to the laws of the United States and beyond the powers, under the Acts of Congress in such case made and provided, of the National Bank of Commerce as an incorporated Banking Association under the laws of the United States, and that the acts and doings of the said Benjamin F. Edwards and George Lane Edwards in promoting, effecting and executing the transfer of the assets and property of the Fourth National Bank, aforesaid, to the National Bank of Commerce were in violation of the National Banking laws and the laws governing said banking institutions, and were furthermore a breach of trust on the part of said Benjamin F. Edwards and George Lane Edwards as directors of the Bank of Commerce, and the facts and circumstances of their interest in the Fourth National Bank as stockholders and otherwise render their action as directors in the National Bank of Commerce in St. Louis in promoting, effecting and executing the transfer of the assets and property of the Fourth National Bank to the National Bank of

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Commerce, a breach of trust, in that said defendants, Benjamin F. Edwards and George Lane Edwards, as directors of the National Bank of Commerce in St. Louis were, in duty bound to execute the trust which said office provided in such a manner as not to promote their own pecuniary and personal interest; and therefore their acts as aforesaid, were in violation of the National Banking laws of the United States as well as contrary to equity and good conscience, and for the consequences and damages resulting therefrom said Benjamin F. Edwards and George Lane Edwards were and are liable to the National Bank of Commerce for all damages ensuing on account thereof.

18. Your orator further alleges that the decision and determination of the rights of the parties hereto can only be reached by the proper interpretation and construction of the National banking laws of the United States under which both of the Banking Associations herein mentioned were organized and incorporated.

19. Your orator, the plaintiff, further showeth that said plaintiff was a shareholder in the said National Bank of Commerce in St. Louis at the time of all the transactions of which your orator, the plaintiff, herein complains, and that this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance; and that your orator the plaintiff, by letter, dated February 22, 1913, to the Board of Directors, of said National Bank of Commerce, which letter was delivered to and read before said Board at a meeting thereof, February 25, 1913, did respectfully and earnestly request said National Bank of Commerce by its governing Board of Directors forthwith to institute appropriate proceedings to recover of Messrs. Benjamin F. Edwards and George Lane Edwards by civil suit the sum of One Million Three Hundred and Sixty Three Thousand Nine Hundred and Sixty Eight and 71/100 Dollars, which this Bank has lost by reason of breaches of trust and illegal acts on the part of said Messrs. Edwards, during the year 1906 and 1907, as directors of said National Bank of Commerce at that time, in the matter of the acquisition by said Bank of Commerce of the assets, business, stock and property of said Fourth National Bank of St. Louis; this plaintiff by said letter, assigning as the grounds of said request that said transaction was promoted and projected by said two directors, and executed and carried out in such a manner as to cause a loss to said Bank of Commerce of the sum above named and Six Per Cent interest thereon from that time, as would appear by the books and records of said Banks and therefore said plaintiff by said letter did request the prompt and immediate action of said Board of Directors of said Bank of Commerce by civil suit to recover of said two directors said amount for said breaches of trust and illegal acts for the use and benefit of said Bank of Commerce the facts and circumstances whereof (as said letter stated) appeared in the record and books of said Banks; but that, notwithstanding plaintiff's said request, said National Bank of Commerce, by its said governing body, said Board of Directors thereof, has failed and omitted to take any such action as is and was so requested by plaintiff, and your orator, said plaintiff, has been informed and verily believes that said

request of plaintiff has been referred to a committee of the said Board without action thereon, although regular or stated meetings or sessions of said Board have been held since such reference was made; and your orator, the plaintiff, verily believes that said Bank of Commerce will take no action in the direction requested by said letter of your orator, the plaintiff, and will not institute suit
41 against said Messrs. Benjamin F. and George Lane Edwards for restitution of said sum or any part thereof, wherefore your orator, this plaintiff, brings this suit for account of said Bank and for the benefit of all its stockholders; and only by the necessity existing (as above described) does he sue herein in his own name, but in so doing he invites said Bank of Commerce, and all other stockholders of said National Bank of Commerce to join and participate with him as parties plaintiff upon the said stockholders' sharing the expenses of the litigation necessary to enforce the rights of all stockholders in said Bank of Commerce.

20. Wherefore, the premises considered, your orator, the plaintiff, humbly prays this Honorable Court to enter a decree herein requiring said Benjamin F. Edwards and George Lane Edwards, defendants, to render an account, in full detail of the said transaction between the Fourth National Bank in St. Louis and the National Bank of Commerce in St. Louis, a full and complete discovery of all the details in said transaction as well as of the interests which each of said defendants respectively held in the year 1907 and in the year 1906 in said Fourth National Bank, together with an account of the loans which each of them had made upon pledge of stock of the Fourth National Bank in St. Louis as collateral therefor, whether such pledge was in the City of St. Louis or elsewhere, and whether held or standing in their or either of their names or in the name or names of said Brokerage firm or Company, or of other persons for them (said defendants Edwards) or either of them, and that your Honorable Court will further adjudge that the plaintiff, for the use and benefit of said Bank of Commerce may recover of and from defendants Benjamin F. Edwards and George Lane Edwards the sum of one million three hundred and sixty three thousand and nine hundred and sixty eight dollars and seventy-one cents, together with interest thereon, or such further sum as may by them be justly due in the circumstances, and to make such other orders touching the rights of the other defendants herein as may be equitable
42 and in accordance with said facts herein stated; that all of said defendants be required by the Court to plead to this amended bill as the Court may direct; and that this Honorable Court will render such further decree and judgment herein, and further orders, as may be in accordance with equity and good conscience, and may meanwhile grant such further process as may be necessary and proper, original or supplemental, to require all of defendants to appear before your Honors and this Honorable Court in due course and full, true and perfect answer make, to this amended bill and to all and singular the premises, and further, to stand, to perform, and abide such further orders, directions and decree therein, as to your Honors and this Court shall seem meet and shall be agreeable to

equity and good conscience and to make such other or further orders herein as to the Court may seem just and equitable.

JOHN P. HERRMANN, *Plaintiff.*

BARCLAY, FAUNTLEROY, CULLEN & ORTHWEIN,
P. H. CULLEN,
SHEPARD BARCLAY,
Solicitors and of Counsel for said Plaintiff.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

STATE OF MISSOURI,
City of St. Louis, ss:

On this 10th day of May, 1913, before me personally appeared John P. Herrmann, the above named plaintiff, who made solemn oath that he had read the foregoing amended Bill of Complaint by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated upon information and belief and as to those matters he believes it to be true.

[SEAL.]

W. W. NALL,
Clerk of the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri,
By IRVINE MITCHELL,
Deputy Clerk.

43 And afterwards, to-wit: on the 17th day of May 1913 the following further proceedings were had and appear of record in said cause, as follows, to-wit:

(*Order Denying Motion for Leave to File Amended Bill.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4153.

JOHN P. HERRMANN, Complainant,
vs.
BENJAMIN F. EDWARDS et al., Defendants.

Now at this day come the parties hereto by their respective solicitors and the said complainant now presents his motion for leave to file an amended bill of complaint in this cause and offers the proposed amended bill of complaint in evidence upon the hearing of the said motion, which motion is now heard before and submitted to

the Court; and the Court now being fully advised in the premises doth

Order that said motion for leave to file said amended bill of complaint be, and the same is hereby denied; to which ruling of the Court the said complainant now and here excepts and is allowed an exception.

Motion to set aside dismissal and for a rehearing, filed by complainant.

May 17th, 1913.

DAVID P. DYER, *Judge.*

Which said motion to set aside dismissal and for rehearing, so filed as aforesaid, is in words and figures, as follows, to-wit:

(*Motion to Set Aside Dismissal and for Rehearing.*)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Equity. No. 4183.

JOHN P. HERRMANN, Plaintiff,
v.
BENJAMIN F. EDWARDS et al., Defendants.

Plaintiff's Motion to Set Aside Dismissal and for Rehearing.

Now again comes plaintiff by his solicitors and counsel and moves the Court to set aside the order dismissing this cause for want of jurisdiction, and the order refusing leave to file an amended bill of complaint and for a rehearing of said rulings, and for
44 grounds of this motion plaintiff assigns the following:

1. Because, upon the facts alleged in plaintiff's original Bill of Complaint, this cause is one arising under the laws of the United States and as such is within the jurisdiction of the said District Court of the United States;

2. Because the Court erred in sustaining the several motions of certain defendants to dismiss;

3. Because said District Court has jurisdiction of said cause under the laws of the United States, and plaintiff is entitled under those laws, to have said District Court proceed to hear and to determine the cause of action stated in plaintiff's said bill of complaint;

4. Because the Court erred in refusing leave to file plaintiff's amended bill of complaint as tendered by plaintiff;

Wherefore, for each one of said grounds, plaintiff prays the Court to set aside the said order of dismissal herein, to allow said amendment, and to proceed to hear and determine said cause.

BARCLAY, FAUNTLEROY, CULLEN & ORTHWEIN,
SHEPARD BARCLAY,
Solicitors and of Counsel for Plaintiff.

And afterwards, to-wit: on the 7th day of July 1913 the following further proceedings were had and appear of record in said cause, as follows, towit:

(*Order Overruling Motion to Vacate Dismissal & for Rehearing.*)

MONDAY, *July 7th*, 1913.

No. 4153.

JOHN P. HERRMANN, Complainant,
vs.
BENJAMIN F. EDWARDS et al., Defendants.

The Court having fully considered the motion to vacate as heretofore filed by the said complainant in this cause and as this day submitted to the Court, Doth
Order that the said motion be and the same is hereby overruled to which ruling the said complainant excepts and is allowed an exception.

45 (*Petition for Appeal and Order Allowing Same.*)

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

Equity. No. 4153.

JOHN P. HERRMANN, Plaintiff,
v.
BENJAMIN F. EDWARDS et al., Defendants.

Plaintiff's Petition for Appeal.

EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI, *ss:*

To the Honorable the Judge of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri:

Again comes John P. Herrmann, plaintiff (appellant) in the above entitled cause, by his solicitors and counsel, and complains that in the record and proceedings in said suit of John P. Herrmann, plaintiff, v. Benjamin F. Edwards et al., defendants (in Equity. No. 4183, in said District Court) and also in the rendition of the decree in said cause in said District Court (as shown by the record therein) manifest error hath happened, to the great damage of plaintiff (appellant) and that said errors in the decree in said cause consisted in particulars specially assigned by said plaintiff (appellant) in his Assignments of Error, heretofore filed in said cause; and said appellant, conceiving himself aggrieved by the decree herein dismissing plaintiff's bill, now humbly prays this Honorable Court to allow to plaintiff an appeal from said decree to the United States Supreme Court and plaintiff hereby appeals from said decree, and states that his

reasons for said appeal are specified in said Assignments of Error duly filed herein, and that an appeal bond herein in due form is herewith submitted, and said appellant (plaintiff) therefore prays that said appeal be allowed by this Honorable Court and that a transcript of the record and of the proceedings and papers upon which said finding and decree were founded, and said finding
46 and decree therein may be duly authenticated and certified to the said United States Supreme Court in due form according to law; and plaintiff (appellant) prays for an order fixing the amount of appeal bond (for stay of execution on said appeal) and for such other orders in the premises as may cause said manifest errors, as duly assigned already in said record, to be reviewed by the United States Supreme Court.

And as in duty bound, your petitioner will ever pray, etc. Dated this 7th day of July, 1913.

BARCLAY, FAUNTLEROY, CULLEN & ORTHWEIN,
Solicitors for said Plaintiff (Appellant).

The foregoing petition for appeal in the above entitled cause, having been duly submitted by counsel for said appellant, it is Ordered that the appeal prayed for is hereby allowed by the undersigned, as Judge of the District Court of the United States and the amount of appeal bond is fixed at Five Hundred Dollars ($500) conditioned as required by law, to be approved by the Court or Clerk thereof; bond filed and approved by the Court.

DAVID P. DYER,
Judge of the U. S. District Court in and for the Eastern Division of the Eastern Judicial District of Missouri.

(*Orders for Appeal.*)

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

Equity. No. 4153.

JOHN P. HERRMANN, Complainant,
v.
BENJAMIN F. EDWARDS et al., Defendants.

Orders for Appeal.

EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI, *ss:*

Now again in this suit comes said plaintiff John P. Herrmann, by his solicitors and counsel, and having heretofore filed herein
47 his Assignment of Errors and a petition for appeal to the United States Supreme Court, from the dismissal and final

decree entered in this cause, and also his bond for appeal in the penal sum of Five Hundred Dollars, conditioned as required by law, upon due consideration whereof it is now

Ordered that said bond be approved and said appeal be allowed as prayed, and that the Clerk of this Court make and certify to the said Supreme Court a full, true and complete transcript of the record and all proceedings and papers in this cause; and on motion of plaintiff, by his solicitors, the citation to defendants on said appeal is duly allowed and signed by the Judge of this Court.

Dated this 7th day of July, 1913.

DAVID P. DYER,
Judge of the U. S. District Court in and for the Eastern Division of the Eastern Judicial District of Missouri.

Which said Assignment of Errors, and Appeal Bond, so presented and filed as aforesaid, are respectively in words and figures, as follows, to-wit:

48 (*Assignment of Errors.*)

In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

Equity. No. 4153.

JOHN P. HERRMANN, Plaintiff,
v.
BENJAMIN F. EDWARDS et al., Defendants.

Assignment of Error by Plaintiff (Appellant).

Now again comes John P. Herrmann, Plaintiff (appellant) by his solicitors and counsel, and respectfully avers that there is manifest error in the record, proceedings and decree in said District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri in the above entitled cause of John P. Herrmann, plaintiff v. Benjamin F. Edwards, et al., defendants (in Equity in said District Court No. 4183) and said plaintiff (appellant) makes the following assignments and specifications of such error in said record in this, to-wit:

1st Assignment of Error.

The said District Court erred in sustaining the motion of defendant H. P. Knapp to dismiss;

2d Assignment of Error.

The said District Court erred in sustaining the motion of defendant E. T. Campbell to dismiss;

3d Assignment of Error.

The said District Court erred in sustaining the motion of defendant Geo. O. Carpenter to dismiss;

4th Assignment of Error.

The said District Court erred in sustaining the motion of
49 defendant E. C. Simmons to dismiss;

5th Assignment of Error.

The said District Court erred in sustaining the motion of defendant John A. Holmes to dismiss;

6th Assignment of Error.

The said District Court erred in sustaining the motion of defendant Samuel C. Davis to dismiss;

7th Assignment of Error.

The said District Court erred in sustaining the motion of defendant E. F. Goltra to dismiss;

8th Assignment of Error.

The said District Court erred in sustaining the motion of defendant Thos. H. McKittrick to dismiss;

9th Assignment of Error.

The said District Court erred in sustaining the motion of defendant Edward A. Faust to dismiss;

10th Assignment of Error.

The said District Court erred in sustaining the motion of defendant L. R. Carter to dismiss;

11th Assignment of Error.

The said District Court erred in sustaining the motion of defendant H. Brookings Wallace to dismiss;

12th Assignment of Error.

The said District Court erred in sustaining the motion of defendant F. C. Orthwein to dismiss;

13th Assignment of Error.

The said District Court erred in sustaining the motion of defendant Elias Michael to dismiss;

14th Assignment of Error.

The said District Court erred in sustaining the motion of defendant W. K. Bixby to dismiss;

15th Assignment of Error.

The said District Court erred in sustaining the motion of defendant Benjamin F. Edwards to dismiss;

50 16th Assignment of Error.

The said District Court erred in sustaining the motion of defendant George Lane Edwards to dismiss;

17th Assignment of Error.

The said District Court erred in sustaining the motion of defendant A. G. Edwards & Sons Brokerage Co. to dismiss;

18th Assignment of Error.

Said District Court erred in dismissing plaintiff's original bill of Complaint.

19th Assignment of Error.

Said District Court erred in dismissing the original bill of complaint and in ruling that said cause is not within the jurisdiction of said District Court;

20th Assignment of Error.

Said District Court erred in refusing to take jurisdiction of said cause as a cause arising under the laws of the United States;

21st Assignment of Error.

Said District Court erred in refusing leave to plaintiff to file an amended bill of complaint;

22d Assignment of Error.

Said District Court erred in overruling plaintiff's motion for leave to file an amended bill of complaint;

23d Assignment of Error.

Said District Court erred in denying plaintiff the right to amend his complaint;

24th Assignment of Error.

Said District Court erred in ruling that said cause stated in the bill is not within the jurisdiction of said Court;

25th Assignment of Error.

Said District Court erred in denying plaintiff's motion to set aside the decree of dismissal herein;

51 Each of said errors of said District Court above assigned was prejudical to the substantial rights of said plaintiff (appellant) upon the merits of said suit, and for each one of said errors, and for any other plain error in the record herein, said plaintiff (appellant) prays that the said dismissal and decree of said District Court herein may be reversed and set aside and that such further proceedings as may be just and conformable to equity proceedings may be directed herein.

BARCLAY, FAUNTLEROY,
CULLEN & ORTHWEIN,
Solicitors and Of Counsel for Appellant.

52 *Appeal Bond (for Stay).*

Eastern Division of the Eastern Judicial District of Missouri, ss:

Know all men by these presents that we, the undersigned, John P. Herrmann (as principal) and August F. Herrmann (as sureties) obligors, are held and firmly bound unto Benjamin F. Edwards, George Lane Edwards, The Fourth National Bank of St. Louis, The National Bank of Commerce in St. Louis, A. G. Edwards & Sons Brokerage Co., James W. Bell, W. K. Bixby, E. T. Campbell, Geo. O. Carpenter, L. R. Carter, F. Brookings Wallace, Samuel C. Davis, Harry Elliot, Edward A. Faust, E. F. Goltra, John A. Holmes, Sam M. Kennard, H. P. Knapp, F. Aug. Duyties, Jas. Campbell, Thos. H. McKittrick, Elias Michael, F. C. Orthwein, Clay Arthur Pierce, Tom Randolph, Chas. Rebstock, E. C. Simmons, W. D. Simmons and W. S. Thompson, Obligees, in the full and just sum of five hundred dollars to be paid to the said obligees, their successors, legal representatives, heirs, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 7th day of July in the year of our Lord one thousand nine hundred and thirteen.

Whereas, lately at the March term, A. D. 1913, of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said Court between said John P. Herrmann as plaintiff and said obligees (above named) as defendants a decree was rendered against the said plaintiff of dismissal and for costs, and the said plaintiff has prayed an appeal from said decree to the United States Supreme Court to reverse the said decree in the aforesaid suit, and has prayed a citation directed to the said obligees citing and admonishing them to be and appear in the said United States Supreme Court thirty days from and after the date of said Citation.

53 Now the condition of the above obligation is such, That if the said plaintiff, John P. Herrman (appellant) shall prosecute said appeal to effect, and answer all damages and costs if he shall fail to make good his said appeal, then the above obligation to be void, otherwise to remain in full force and virtue.

JOHN P. HERRMANN, [SEAL.]
AUGUST F. HERRMANN. [SEAL.]

Approved at St. Louis, Mo. this 7th day of July 1913.

DAVID P. DYER,
Judge of the said District Court of the United States.

54 (*Clerk's Certificate.*)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Nall, Clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in the cause No. 4153, In Equity, wherein John P. Herrman is Complainant and Benjamin F. Edwards and others are Defendants, together with all things of and concerning the same, as fully as the same remains on file and of record in said cause, and also including the proposed Amended Bill of Complaint, as lodged with but not filed by the Clerk; and that the original Citation is hereto attached and herewith returned.

In Witness Whereof, I hereunto set my hand and affix the seal of said District Court, at my office in the City of St. Louis, Missouri, in the Eastern Division of said District, this twenty-second day of July A. D. 1913.

[Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri.]

W. W. NALL,
Clerk of said District Court.
By IRVINE MITCHELL,
Deputy.

Endorsed on cover: File No. 23,802. E. Missouri D. C. U. S. Term No. 651. John P. Herrmann, appellant, vs. Benjamin F. Edwards et al. Filed July 25, 1913. File No. 23,802.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914

JOHN P. HERRMANN, Appellant
vs.
BENJAMIN F. EDWARDS et al. } No. 222

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI

BRIEF FOR APPELLANT

S. MAYNER WALLACE
WM. R. ORTHWEIN
SHEPARD BARCLAY
Attorneys and of Counsel for Appellant

(23,802)

Due Service of within Brief is acknowledged, Feby. 27th, '15

NAGEL & KIRBY
Attys. for certain Defendants

JEFFRIES & CORUM
Of Counsel for Appellee

EUGENE S. WILSON
Atty. for certain Defendants

GEO. L. EDWARDS
Atty. for N. B. of C.

JOHN F. LEE
Atty. for certain Defendants

Received copy of Brief, Feby. 27, 1915

LEWIS & RICE
Attys. for certain Defendants.

Subject Index

Table of Cases Cited

IN THE

SUPREME COURT OF THE UNITED STATES

(FILE NO. 23,802)

JOHN P. HERRMANN, Appellant
vs.
BENJAMIN F. EDWARDS et al.

} Question of Federal Jurisdiction

APPELLANT'S STATEMENT OF THE CASE

This is a suit in equity by plaintiff, as stockholder in a National Banking corporation, to recover of two directors thereof (after an accounting) a sum in excess of one million dollars for alleged breaches of their trust as such directors, in violation of the banking laws of the United States by acts in excess of their powers under those laws.

The District Court at St. Louis, Missouri, sustained motions to dismiss, on the ground of supposed **want of Federal jurisdiction.**

After a decree of dismissal, plaintiff appealed in due course.

The large issue presented by the appeal is whether or not the District Court as a Federal Court had power and jurisdiction to hear and determine the case made by the bill.

It should be well noted at the outset that plaintiff's claim in equity for an accounting, and for a recovery of the large sum alleged to be due, is against the **two individual directors** of a National Banking Association, upon charges of breaches of their trusts and duties as such directors in the doing of acts in violation of the banking laws of the United States. The bank itself is joined as defendant merely because it had declined to make or to prosecute the same claim, after having been formally requested to enforce the same. So that the case as now exhibited by the record prays no recovery by plaintiff against the National Bank referred to, which is joined as defendant only to complete the case against the two substantial defendants, the said directors.

Appellant respectfully prays a reversal on the ground that the suit is one **arising under the laws of the United States.**

The bill does not attempt to place the Federal status of jurisdiction upon diverse citizenship. It avers that the individual defendants are citizens of Missouri (Tr., p. 4), and that the corporate defendants are banking associations incorporated under the laws of the United States, domiciled in the same state.

The bill avers (Tr., pp. 9, 27):

> "18. Your orator further alleges that the decision and determination of the rights of the parties hereto can only be reached by the proper interpretation and construction of the National Banking laws of the United States under which both of the Banking Associations herein mentioned were organized and incorporated."

The terms of the original bill will sufficiently appear presently.

After several motions by defendants to dismiss were sustained, for supposed want of jurisdiction (Tr., p. 19) complainant duly tendered, and prayed leave to file, an amended bill (Tr., p. 20), wherein (in addition to repeating the averments of the original bill) more specific statements of the unlawfulness of the chief defendants' acts (referring to the Federal law) are made; but the amended bill, while regularly lodged with the clerk (Tr., p. 20), was not allowed by the learned District Judge to be filed (Tr., p. 29), presumably for supposed want of jurisdiction.

Both bills are substantially identical; and constitute parts of this record.

The case as stated in the bill is comprised of a series of interesting facts; should it appear that the averments of the amended bill present a cause of action within the proper power and jurisdiction of the District Court, and that the original bill does not, then there was plain error, we respectfully submit, in the learned trial Judge's refusal to permit the amendment to be filed. In that case, our prayer for a reversal includes a request for directions to allow the filing of the latter.

It would serve no useful purpose to set forth at large in this brief all of either bill, as only a question of jurisdiction is involved. We will present a sufficient outline of the bill, however, to give your Honor command of those features which indicated that the Federal jurisdiction is not merely applicable, but is the only proper authority to which to appeal for the redress sought.

Plaintiff, a stockholder (owning one hundred shares) in the National Bank of Commerce in St. Louis organized under the Banking Acts of Congress, alleged that the bank purchased, in violation of the National Bank-

ing laws, all of the capital stock and other assets of the Fourth National Bank, another bank incorporated under the same Federal laws, and that the circumstances of that purchase were fraudulent on the part of the two directors, named as chief defendants, and resulted in a large loss to the stockholders of the former bank.

Plaintiff avers that the sale was instigated and consummated mainly by the Edwards brothers, both of whom were officers and directors of each and both banks, and that they made a large profit thereby. The loss they so occasioned to the stockholders of the Bank of Commerce is the subject-matter sought to be recovered in this suit.

Plaintiff's suit, in which both banks and the directors of the first mentioned one (including the persons above named) were made defendants, has for its purpose the obtaining of a decree, for the benefit of the National Bank of Commerce, for a sum exceeding one million dollars, as the amount of loss suffered by that bank in consequence of the breaches of trust as directors, as alleged, the particulars of which are fully set forth.

Plaintiff specified the acts and procedure whereby the said two directors effected the purchase and sale of the stock of the Fourth National Bank, and alleges that

> "the acts and transactions of said defendants Benjamin F. Edwards and George Lane Edwards in the matter of the transfer of the assets and property of the Fourth National Bank to the National Bank of Commerce" (those acts are previously described with much detail (Tr., pp. 6-8) "were contrary to the laws of the United States and beyond the powers, under the acts of Congress in

such case made and provided, of the National Bank of Commerce as an incorporated banking association under the laws of the United States, and that the acts and doings of the said Benjamin F. Edwards and George Lane Edwards in promoting, effecting and executing the transfer of the assets and property of the Fourth National Bank, aforesaid, to the National Bank of Commerce were in violation of the National Banking laws governing said banking institutions" * * * (Tr., p. 8).

It is further averred later on (Tr., pp. 8-9) that said acts

"were furthermore a breach of trust on the part of said Benjamin F. Edwards and George Lane Edwards as directors of the Bank of Commerce, and the facts and circumstances of their interest in the Fourth National Bank as stockholders and otherwise render their action as directors in the National Bank of Commerce in St. Louis in promoting, effecting, and executing the transfer of the assets and property of the Fourth National Bank to the National Bank of Commerce a breach of trust, in that said defendants, Benjamin F. Edwards and George Lane Edwards, as directors of the National Bank of Commerce in St. Louis, were in duty bound to execute the trust which said office imposed in such a manner as not to promote their own pecuniary and personal interest; and therefore their acts as aforesaid were in violation of the National Banking laws of the United States as well as contrary to equity and good conscience, and for the consequences and damages resulting therefrom said Benjamin F. Edwards and George Lane Edwards were and are liable to the National Bank of Commerce for all damages ensuing on account thereof."

The bill also states (as already quoted) that the determination of the rights of the parties can only be reached by the proper interpretation of the National Banking laws of the United States under which both those Banking Associations were incorporated (Tr., p. 9).

(The amended bill is somewhat more specific in its allegations of the violation of those Federal laws. Tr., pp. 23-4, 24-5, 25, 26.)

Several defendants filed motions to dismiss for alleged want of jurisdiction; and plaintiff's case was dismissed by the Court upon that ground. We submit, however, that the suit is one arising under the laws of the United States, over which the District Court is given jurisdiction under section 24 of the Judicial Code, in that the rights of all parties, and the duties, trusts, powers and liabilities of the parties-defendant depend entirely on the proper construction of the Federal laws governing National banks.

Appeal

An appeal to this Court was duly perfected from the decree of dismissal, and all usual and necessary formalities were observed (Tr., pp. 32-37).

SPECIFICATIONS OF ERROR

Appellant, plaintiff, assigns and specifies error in the record and proceedings of said District Court, in these particulars:

I

The said District Court erred in dismissing plaintiff's bill and **refusing to take jurisdiction over said cause** (Tr., p. 19)

II

Said District Court erred in sustaining each of the motions by defendants to dismiss (Tr., pp. 14-19) on the supposed ground of a want of Federal jurisdiction over said cause

III

The District Court erred in refusing plaintiff leave to amend the bill of complaint in respect of allegations of Federal jurisdiction in the amended bill

IV

The said District Court erred in refusing to entertain jurisdiction over said cause on the allegations of the original and of the amended bill of complaint

BRIEF OF THE ARGUMENT

Appellant contends that the trial court erred in dismissing the bill for the supposed want of Federal jurisdiction in the District Court to hear and determine it, as one arising under the laws of the United States.

The mere fact that these banking institutions are incorporated under the acts of Congress would formerly have been sufficient to confer jurisdiction.

Petri v. Commercial National Bank, 142 U. S. 644
Texas & P. Ry. Co. v. Howell, 224 U. S. 577

But, after the Federal Legislation (4 Fed. Stats. Ann. p. 248) making those banks "citizens of the states in which they are respectively located," the sole fact that such a bank is a party does not confer jurisdiction. Yet where the whole case presented, as in the case at bar, depends on rights, duties and liabilities and upon powers conferred or denied by Federal statutes whose

interpretation must furnish the rules of law for decision of the case, then the latter is one "arising under the laws of the United States", just as was accordingly held (in circumstances by no means so clear as those at bar) with reference to Federal statutes incorporating railways.

Pacific Railroad Removal Cases, 115 U. S. 12

In the latter decision by Mr. Justice Bradley, whose fame and authority increase with the passage of years, we find the following ruling of significance here:

> "But as it was objected that several questions of general law might arise in a case, besides that which depended upon an act of Congress, the Court first disposed of that objection, holding that, as scarcely any case occurs every part of which depends on the Constitution, laws or treaties of the United States, it is sufficient for the purposes of Federal jurisdiction if the case necessarily involves a question depending on such Constitution, laws or treaties."

The facts of the bill here show "that it is based" entirely upon the laws of the United States. Hence the "suit arises under" those laws.

L. & N. R. R. Co. v. Mottley, 211 U. S. 149

Where "by the pleadings, the cause of action was based on a statute of the United States", the Federal Court has jurisdiction.

Chicago Ry. Co. v. King, 222 U. S. 222

These decisions cited apply the principles we invoke.

The case at bar involves two propositions, first, whether the National Bank of Commerce had power, under the acts of Congress, to purchase, in the circum-

stances described, all of the capital stock and assets of the Fourth National Bank; and, secondly, whether, under those particular circumstances described, the Messrs. Edwards incurred liability to the National Bank of Commerce for a breach of duty as officers of the bank under the Federal laws of its being.

Whether there is such a liability depends, if it appears that there was no intentional wrongdoing or negligence on their part or profit realized by them, upon whether, in said circumstances, the transaction was in violation of the National laws of banking. And this latter question will have to be decided by interpreting the Federal laws. If answered in the negative, there may be no resultant liability. Much depends upon whether, under the allegations and proof, the purchase was illegal, under the Federal laws governing those corporations.

To quote from one opinion from the Ninth Circuit:

> "Thus it appears that the specific right, the alleged violation of which it is sought by the bill to redress, is one given by a law of the United States—not remotely or indefinitely, but directly and positively—and that the measure of liability and recovery for such violation is likewise specifically furnished by the same law. Obviously it seems to me that in such a case the suit must be held to be one arising under a law of the United States, because the right to recover, if it exists, is thus directly given by an act of Congress, and the Court is bound, therefore, in determining the controversy to decide whether or not the act gives the right claimed under it. Nor is this view to my mind in variance with the contention of the defendants, based upon the language of some of the cases, that it must appear from the averments of

the bill that the construction of a Federal statute is necessarily involved; for, in order to determine whether or not the act relied on does give the right claimed, the Court is necessarily required to construe the act. That that question of construction is a matter in actual controversy sufficiently appears from a pleading which, like the present bill, merely alleges the violation of the statute, the fact of the injury resulting from such violation, and the fact that compensation has not been made for that injury. Such controversy exists because, if the complainant's construction of the law be correct, the defendants ought to have made good the loss resulting from their wrongful acts; and their failure so to do is in itself a denial of the correctness of that construction."

Huff v. Bank, 173 Fed. 335-6

The charter powers of a national bank are stated in section 5136 (R. S.). But the right or power to acquire the stock of another such bank is not expressly granted or withheld. This Court has ruled, however, that such banks are impliedly prohibited from dealing in stocks.

First Nat. Bank v. Nat. Exch. Bank, 92 U. S. 122

They have no power or authority to purchase with their surplus funds, as an investment and hold as such, shares of stock in other national banks.

First Nat. Bank v. Hawkins, 174 U. S. 364

It is beyond their powers for a national bank to take stock in a corporation engaged in handling the assets of an insolvent, even though same is taken in exchange for a claim it owns.

First Nat. Bank v. Converse, 200 U. S. 425

There are circumstances where, when a transaction is beyond the powers of a national bank, it must render an account to the person with whom the transaction is had.

Citizens' Nat. Bank v. Appleton, 216 U. S. 196

But whether, under the facts stated in the bill this particular acquisition was within or beyond powers of the bank and whether same was for an investment or made to protect against loss are questions dependent for a solution upon the Federal law governing these banks; and, as stated by Chief Justice Marshall, the "case may be truly said to arise under the Constitution, or a law of the United States, whenever its correct decision depends upon the construction of either."

Cohens v. Virginia, 6 Wheat. 379

Likewise where the title or right set up by the party may be defeated by one construction of the Constitution or laws of the United States, or sustained by the opposite construction.

Osborn v. Bank of U. S., 9 Wheat. 822

A further question may be involved in this suit: whether, under sections 5220, and following (R. S.) the Fourth National Bank, by the sale of its stock and assets, dissolved in a legal manner—and the bearing that the answer thereto may have on complainant's right to the relief sought.

To quote another case:

> "A Federal issue is raised and we cannot say that it is too frivolous to give jurisdiction."
>
> Lesser v. Gray, 235 U. S. ——— (decided Jan. 18th, 1915)

Causes of action based on the Federal safety appli-

ance law arise "under the laws" of the United States.
Chicago Ry. Co. v. King, 222 U. S. 222

See also on our general question of Federal jurisdiction.

L. & N. R. Co. v. Finn, 235 U. S. ——— (decided Jan. 5th, 1915)

That complainant's cause of action is properly within the Federal jurisdiction has heretofore been assumed in many reported cases, and expressly sustained in many, of which we cite a few:

In *Bailey v. Mosher* (before Judges Caldwell, Sanborn and Thayer), 63 Fed. 488, the plaintiff loaned money to an insolvent national bank, and then sued its officers and directors in the State court, for the amount, alleging that they had deceived him as to the bank's financial condition; that they had loaned excessive amounts to certain persons and paid unauthorized dividends, all in violation of the National Banking Act, and averred that, "by reason of the several violations of the banking law as above set forth", defendants were liable to him.

Thereupon the case was removed to the United States Court "upon the ground that the suit was one arising under the laws of the United States"; and the Court of Appeals, in discussing the question of Federal jurisdiction, said:

> "It is earnestly contended that this is not a suit arising under the laws of the United States, but is an action for deceit, with which the National Banking Act has no connection. The soundness of this contention must be tested by the averments of the petition. The petition states a single cause of action, founded wholly on the alleged mis-

feasance and nonfeasance of the defendants in their capacities as officers and directors of a national bank. The alleged official misconduct of the defendants which is relied upon as stating a ground of action is particularly set out. It is alleged that they made false and misleading reports as to the condition of the bank to the comptroller of the currency, by which the plaintiff was deceived and misled as to the condition of the bank; that loans were made to persons in excess of the amount which could lawfully be loaned to any one person; that they made large loans to the president and cashier of the bank, in violation of the banking act, and declared and paid dividends when there were no earnings or profits out of which to pay them; that all of these acts were violations of the National Banking Act, and of the duties of the defendants as officers and directors of the bank under that act; and the complaint concludes with the averment that, 'by reason of the several violations of the banking law as above set forth', the defendants are liable to the plaintiff in the sum sued for. In view of the last averment of the petition it is difficult to perceive how the plaintiff can successfully maintain that his cause of action does not arise under a law of the United States."

That opinion proceeds to declare that the plaintiff's motion to remand was properly overruled by the trial court.

In *Huff v. Bank*, 173 Fed. 33, it was held that a suit by a stockholder of a national bank, for its benefit, against the bank, its officers and directors, alleging that losses had been sustained by the bank on account of loans made, for it, by its officers and directors, in violation of the National Banking Act, involved the

construction of that act and was, therefore, a suit arising under the laws of the United States, of which the Federal Courts had jurisdiction, even in the absence of diverse citizenship.

In *Bank v. Wehrman*, 202 U. S. 295, it is ruled that an unsuccessful attempt by a national bank to rely, in proceedings in a State court, upon the National Banking laws for immunity against liability for certain acts, was sufficient to sustain the appellate jurisdiction of this Court on writ of error to said State court.

In *Bank v. Wade*, 84 Fed. 10, it was ruled that the Federal trial court had jurisdiction of a suit by a national bank against its directors to recover for losses caused by violations of the National Banking Act in loaning funds in excess of the statutory restrictions, as one arising under the laws of the United States; and this case is cited in Abbott v. Bank, 175 U. S. 409.

This Court, in *Wyman v. Wallace*, 201 U. S. 230, considered this question on a bill filed by the holder of a note, given by a national bank, in a suit against the bank and others to enforce the liability of its stockholders, provided for in the National Banking laws, and reached the conclusion that the cause was one of Federal jurisdiction; saying, through the late Mr. Justice Brewer:

> "The case presented was one arising under the laws of the United States." To quote further: "In proceeding, therefore, by this suit to enforce, in behalf of himself and all other creditors of the American Bank, the extra liability imposed by Rev. Stat., sec. 5151, a case was presented arising under the laws of the United States, and of which, independently of the matter of diverse citizenship, the Circuit Court had jurisdiction."

An action for rent, brought against the agent for the shareholders of an insolvent national bank, to whom the Comptroller of the Currency has *released* the estate of the bank, is one to wind up the affairs of the bank, and, as such, is within the jurisdiction of a Federal Circuit Court.

International Trust Co. v. Weeks, 203 U. S. 364

See also:

Cooke v. Avery, 147 U. S. 375 ("a Federal ingredient sufficient")

Tennessee v. Davis, 100 U. S. 257 (jurisdiction obtains even though other questions of law or fact, are involved—"a single such [Federal] ingredient in the mass is sufficient")

American Nat. Bank v. Tappen, 174 Fed. 431 (where it is held that jurisdiction sufficiently appears if the meaning or application of the Federal laws are involved)

Larabee v. Dolley, 175 Fed. 365

Milkman v. Arthe, 213 Fed. 642

It does not seem that the case of *Whittemore v. Bank,* 134 U. S. 527, intends to announce a different doctrine from that contended for by appellant here.

In that case suit was brought in the Federal Court for a recovery, for the benefit of the bank, of losses alleged to have been occasioned by certain acts of its directors, and a determination of the case involved, and only involved, a question of their liability which was fully answered by an application of the principles of general, or commercial, law; no question of the meaning or construction of the National Banking laws was contended for by the complaining stockholder, nor was it made to appear that the operation of these

laws might have conduced to affect the decision in the slightest way.

If any other meaning is sought to be attributed to the opinion in that case, it would seem to have been limited very greatly by later cases already cited.

Wyman v. Wallace, 201 U. S. 230
Merchants' Nat'l Bank v. Wehrmann, 202 U. S. 295
International Trust Co. v. Weeks, 203 U. S. 364

In fact, the same learned Judge, who wrote the opinion in the *Wittemore case,* limits it somewhat in his ruling in the later case of

Petri v. Commercial Nat'l Bank, 142 U. S. 644

Recent Changes in the Law

Complainant's suit was filed after the Judicial Code became effective; the jurisdiction of the Federal Court, in cases such as this, should now be even freer from doubt than before that enactment. The Act of August 13th, 1888, ch. 866, sec. 4, provided:

> "That all national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; *and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State.*" (Italics ours.)

The Act of March 3rd, 1911 (Judicial Code), expressly repeals the foregoing, in section 297; and provides, in section 24 (sub. 16):

> "And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the states in which they are respectively located."

It will be observed that the italicized portion of the Act of 1888, set forth above, is no longer in force; and that the Judicial Code, in the provision quoted, embodies the present law on this question. What, then, is the status of a National Bank as respects the question of Federal jurisdiction? We submit, in answer, that, under the present law, the jurisdiction of the State courts, as conferred by the Act of 1888 and those prior thereto, is narrowed; and, consequently, that the Federal jurisdiction is proportionately enlarged. This is a *necessary* conclusion, unless it may be said that Congress meant nothing by the use of the italicized words, quoted, *supra*, and did a vain and useless thing in incorporating them into the Act of 1888. Under that Act, national banks were not only "deemed citizens of the States" in which were located, but the Federal courts *had only such jurisdiction over them* as said courts had over "individual citizens of the same State." Now, all the law provides is that the national banks shall "be deemed citizens of the States" in which they are. It must be assumed that there was *a purpose* in changing the wording of this statute. And it appears to have effected this result, viz., that the State courts are given a jurisdiction only in that class of cases where, in the absence of statute, the national bank, by reason *solely* of its source of incorporation, could sue or be sued in the Federal courts; that is, where the *only* ground for Federal jurisdiction is *the fact* of its

national organization. For example, where one of its employes, engaged in operating the elevator in its banking house, negligently injures a person.

But, in all cases where the cause of action by or against it arises out of the conduct of the primary business for which it is organized, or transactions engaged in by it in connection with such business, the Federal jurisdiction (even in instances where, before the passage of the Judicial Code, the State court might have had jurisdiction) now obtains.

We believe, therefore, that the State court jurisdiction exists only in cases where a national bank becomes a party to litigation for reasons not simply collateral to, but disconnected with, the conduct of its business of banking under the Acts of Congress. If so, the help afforded by the adjudicated cases cited above is not necessary to a disposition of this appeal; but it may be disposed of by following the obvious intent of the change in the older law, namely, by treating cases in which such banks are parties just as all other parties are treated with reference to their connection with questions of federal law

True Nature of the Case at Bar

After all, the judicial eye must observe the case made by the bill as an entirety, and determine its true nature. The facts of each case should be kept in view. Here the whole theory of the bill involves the application of the national banking laws to the facts alleged, in order to permit the application of the principles embodied in those laws as warranting the redress prayed or any part thereof. The extent of the powers of these banks and of their officers is measured by the federal laws of

their creation, as well as the powers rightfully belonging to their officers.

The officers of a national bank are not technical trustees of express trusts, but they are the agents of the bank charged under the national banking laws with an implied trust to use the funds of the bank for the purposes specified in these laws only, and to preserve them for their creditors and stockholders; and they are personally liable to the bank for losses caused by their use of its funds for unauthorized purposes, as well as for culpable negligence in their use, and for their fraudulent appropriation.

Bank v. Wade, 84 Fed. 10
Cockrill v. Abeles, 86 Fed. 505
Cooper v. Hill, 94 Fed. 582

Whatsoever court deals with those questions must interpret the duties, trusts and obligations of such officers by the terms of the federal laws allowing the incorporation of those banks and defining their powers.

A case such as that at bar has no other rules of guidance than those found in a sound interpretation of the federal laws creating those banks and conferring powers on their managing officers.

The spirit and intent of the legislation conferring jurisdiction on the federal district courts over causes arising "under the laws of the United States" seems to us to include such suits as that at bar. Your Honors' wide experience in dealing with such questions will doubtless make easy the solution in the case at bar. If we have done anything substantial toward aiding your examination in the present instance we shall be thankful. As we understand the purpose of the federal laws and the facts of this case, we believe the latter is one

of federal cognizance. Accordingly we pray that the decree below be reversed and the cause be remanded for further proceedings.

S. Mayner Wallace
Wm. R. Orthwein
Shepard Barclay
Solicitors and of Counsel for Appellant

St. Louis, Feb. 1915.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914

JOHN P. HERRMANN
Appellant
vs.
BENJAMIN F. EDWARDS et al.
No. 222

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI

REPLY BRIEF FOR APPELLANT

BARCLAY, ORTHWEIN & WALLACE
Solicitors and of Counsel for Appellant

(23,802)

Service duly accepted, of Appellant's Reply Brief, by undersigned, of Counsel for several appellees:

EUGENE S. WILSON
Attorney for Certain Appellees
NAGEL & KIRBY
Of Counsel for Certain Appellees

JEFFRIES & CORUM
Of Counsel for Appellees
GEO. L. EDWARDS
For Appellee Bank

F. A. CLINE
For Appellee Holmes

SUPREME COURT OF THE UNITED STATES

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JOHN P. HERRMANN, *Appellant* vs. BENJAMIN F. EDWARDS et al. — No. 222

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI

REPLY BRIEF FOR APPELLANT

The appellant respectfully submits these suggestions by way of **Repiy** to the learned Briefs for appellees.

Each case of this nature must be determined by its own peculiar facts in ascertaining whether a federal question is really and substantially involved. Adjudged cases, on such an issue, while instructive as illustrating principles of judicial action, are rarely decisive, owing to kaleidoscopic variations in facts wherein slight changes sometimes present an entirely different legal aspect from that shown before the shift of the objects in view.

I

The Statutory Nature of The Duties of Defendant Directors

One of the learned Briefs for appellees (Messrs. Bixby, Knapp and others) advances the idea (p. 19) that no federal question is presented by the bill because the liability sought to be asserted "does not depend upon any particular provision of the National Banking Act, but upon the general principles of the law which make persons committing such frauds responsible to those injured to the extent of the damage caused by the fraud or neglect."

But those observations ignore, we respectfully submit, the nature of the duties and obligations of national bank directors as those duties and obligations are created by, and depend entirely upon, federal legislation and the interpretation thereof.

Directors of a national bank are not, under the provisions of the federal banking statutes, technical trustees of express trusts; but they are agents of the Bank, charged as such, with implied trusts to use and administer the funds of the bank only for the purposes and objects specified by those laws, and subject to the statutory liabilities expressed in those laws (sec. 5239, R. S.) which laws must be construed, or at least applied, to the facts claimed by the bill to create a right to redress for any breach of those statutory duties or limited powers.

Briggs v. Spaulding, 141 U. S. 147
Cooper v. Hill, 94 Fed. 590
Cockrill v. Cooper, 86 Fed. 13
(per Judge THAYER, Judges SANBORN and PHILIPS concurring)
Cockrill v. Abeles, 86 Fed. 505
Stephens v. Overstolz, 43 Fed. 771

If, in the course of the proceedings, it should develop that there is no real and substantial federal question, arising on the facts in evidence, it then would be the duty of the court to proceed no further, but to dismiss.

Minnesota v. North. Sec.'s Co., 194 U. S. 66

The case at bar invokes the interpretation and application of the federal laws concerning banking. The acts charged as creating liability on the part of the National Bank directors are claimed by the bill of complaint to be acts beyond the powers of the said banking concerns, under the federal laws of their being, as well as to be breaches of trust. Some of the passages of the bill presenting those phases of the demand for redress are as follows (Printed Trans., p. 26):

> "17. The plaintiff, your orator, further respectfully represents" * * * "that under the terms and provisions of the National Banking Act of the United States, the acts and transactions of said defendants Benjamin F. Edwards and George Lane Edwards in the matter of the transfer of the assets and property of the Fourth National Bank to the National Bank of Commerce were contrary to the laws of the United States and beyond the powers, under the Acts of Congress in such case made and provided, of the National Bank of Commerce as an incorporated Banking Association under the laws of the United States, and that the acts and doings of the said Benjamin F. Edwards and George Lane Edwards in promoting, effecting and executing the transfer of the assets, and property of the Fourth National Bank, aforesaid, to the National Bank of Commerce were in violation of the National Banking laws and the laws governing said banking institutions, and were furthermore a breach of trust on the part of said

Benjamin F. Edwards and George Lane Edwards as Directors of the Bank of Commerce, and the facts and circumstances of their interest in the Fourth National Bank as stockholders and otherwise render their action as directors in the National Bank of Commerce in St. Louis in promoting, effecting and executing the transfer of the assets and property of the Fourth National Bank to the National Bank of Commerce, a breach of trust, in that said defendants, Benjamin F. Edwards and George Lane Edwards, as directors of the National Bank of Commerce in St. Louis, were, in duty bound to execute the trust which said office provided in such a manner as not to promote their own pecuniary and personal interest; and therefore their acts as aforesaid, were in violation of the National Banking laws of the United States, as well as contrary to equity and good conscience, and for the consequences and damages resulting therefrom said Benjamin F. Edwards and George Lane Edwards were and are liable to the National Bank of Commerce for all damages ensuing on account thereof."

"18. Your orator further alleges that the decision and determination of the rights of the parties hereto can only be reached by the proper interpretation and construction of the National Banking Laws of the United States under which both of the Banking Associations herein mentioned were organized and incorporated." (Tr., p. 27.)

The learned Briefs for appellees claim that the bill of complaint does not cite the federal laws (relied upon) specifically. We submit that such citation is not necessary, and certainly not as against motions directed

broadly at a supposed want of jurisdiction, and not at any obscurity or vagueness in the petition itself.

K. C. R. Co. v. Albers Co., 223 U. S. 573
R. Co. v. McWhister, 229 U. S. 265
State v. Court of Appeals, 97 Mo. 281

How can the alleged want of power to do the acts charged to have been done (inflicting damage on the federal corporations) be determined, otherwise than by construing the federal banking laws which alone confer, withhold or deny those powers? It has been held that only such powers are granted by the federal statutes (concerning banking) which are expressed in these laws; but what is, and what is not, within the fair and reasonable incidence of the language conferring those powers is often a question of nicety, as many decisions exhibit, even at a casual reading.

Logan Co. v. Nat. Bank, 139 U. S. 67
California Bank v. Kennedy, 167 U. S. 362
Seligman v. Nat. Bank, 21 Fed. Cas. No. 12,642
Charlotte Nat. Bank v. Nat. Exchge. Bank, 92 U. S. 127
West. Nat. Bank v. Armstrong, 152 U. S. 346
Nebraska v. Orleans Nat. Bank, 88 Fed. 947

It was not essential to cite or to set forth the banking laws of the United States on which rests the liability of the chief defendants.

Bridge Props. v. Hoboken Co., 1 Wall. 142

The courts take judicial notice of those public statutes, as do the state courts, without the pleading thereof. "The plaintiff need not and **should not,** state

in the bill any matters of which the Court is bound judicially to take notice, such as public acts and laws."

3 Ency. Pl. & Pr. 356
Story, Eq. Pl. (8 ed.), sec. 24
Owings v. Hull, 9 Peters 625
Gormly v. Bunyan, 138 U. S. 635

The liability of those offending directors originates in a statute (sec. 5239, R. S. U. S.; Act, June 3, 1864, c. 106, sec. 53) which declares such personal liability for any violation (knowingly) of the provisions of the law, to the extent of all damages which the bank, "its shareholders or any other person shall have sustained in consequence of such violation".

But the duties of directors are defined by various sections of the banking law, which also limit the scope of their powers and thus lay down the law of their conduct as directors. The special powers conferred by the banking *Act* operate to restrain the use of other powers, but the extent of the effect of such legislation requires an exposition of the federal statutes in which all the law of the subject appears.

Bank v. Wehrmann, 202 U. S. 295
Nat. Bk. v. Converse, 200 U. S. 425
Nat. Bk. v. Weinhard, 192 U. S. 243

If defendants concede all the law and the facts alleged in the bill of complaint, then the relief must be such as the federal law warrants, and its courts apply, according to the procedure and methods thereof.

In circumstances such as here appear, we submit that the federal courts are the only proper courts to adjudicate the exclusive questions of federal law arising on the facts in this bill. Jurisdiction in such a case has been often assumed, without question, as is seen

in many of the decisions already cited in this and in our first brief.

See also Nat. Bank v. Johnson, 218 Fed. 822
Bank v. Wehrmann, 202 U. S. 299
Bank v. Ins. Co., 193 U. S. 581

For an interesting comment on the effect of sec. 5239 (R. S. U. S.) on the conduct of directors, and on their personal liability, it would be well to consult

3 Thompson, Corps., sec. 4303
Stephens v. Overstolz, 43 Fed. 465

In one of the interesting and able briefs for appellees (by learned counsel for the Messrs. Edwards) it is said that (Tr., p. 9).

> "this Court, on numerous occasions, has passed on all questions of law that can possibly arise on the facts set forth in this bill. And having heretofore decided such questions, **the Federal question vanishes and jurisdiction cannot be obtained by asking this Court to again decide the same question.**"

The **display type** is ours.

The idea thus advanced would defeat the application of federal jurisdiction in any case when the same federal law applicable had been previously invoked and adjudicated in some other case; so that the luckless modern litigant would be driven into a forum which might decline to apply the interpretation supposed to be settled by the federal tribunals. The reply to such a contention is that the very reason which underlies the grant of federal jurisdiction over federal questions is not merely to secure once, but **always**, a clear and uniform interpretation of federal law by federal courts.

II

The Interpretation of the Bill

One of the large purposes of the recent revision of the *Rules* governing equity procedure was to simplify and shorten the methods of pleading theretofore prevailing in that jurisdiction. The Bar were encouraged to believe that brevity was desirable, and that the old-fashioned verbosity and also its completeness were not essential to a substantial outline of a claim for equitable relief. Hence *Rule 25* expressly ordains, in relation to the gist of the bill:

> "Third, (a short and simple statement of the **ultimate facts** upon which the plaintiff asks relief, omitting any mere statement of evidence)."

That is a new provision. "**Ultimate facts**" appear here in the charges that the acts complained of were beyond the powers of the Banks under the federal Banking laws, and hence that the acts of the directors were unauthorized by those laws, and being injurious furnish ground for relief, such as the Court may accord (under the federal statutes cited in our Briefs) after the facts are unfolded and the evidence fully heard. The measure of duty of officers of the Bank is furnished solely by the banking laws of the United States, and their interpretation is necessary to a determination of the issues raised by the facts alleged. The petition should be taken as true for present purposes; no denials of its allegations having as yet been made.

Ry. Co. v. Los Angeles, 194 U. S. 112.

The case stands here as though submitted upon a general demurrer under the equity practice prevailing

prior to the revision of the Rules, effective Feb. 1, 1913. The federal banking laws need not be recited in the complaint. If they are applicable, and the relief we pray may be accorded under them, appellant, we claim, with all due respect, is entitled to be given such appropriate relief by the federal forum which he has sought for that purpose.

At the present stage of the litigation, the nature of the case should be judged by the allegations of the bill of complaint. If those allegations warrant relief under the banking laws of the United States, it seems to us that the federal court is the very one to accord that relief.

The reformed federal *Rules* of Equity procedure are designed to promote brevity and conciseness in pleadings, and to dispense with ancient elaboration and undue prolixity. This bill of complaint was drawn so as to present the salient facts in as short form as practicable to obey the spirit and intent of the recent amendments of the Rules for such pleadings, which we suppose to be framed with the general purpose of inviting a reasonable if not liberal construction.

III

Is the Petition Sufficient in its Allegations Under Rule 27?

In one of the learned Briefs for appellee (the Messrs. Edwards) appears the claim (p. 18) that the bill omits to conform to the requirements of Equity Rule 27. We reply that learned counsel labor under a serious misapprehension in that contention which a close reading of section 19 (Tr., p. 9) of the bill would probably dispel. But even if there was sufficient merit in their contention to make it debatable, the discussion would be ir-

relevant to the present inquiry, which goes only to the question of **jurisdiction over the cause** and not to the sufficiency of a bill within the jurisdiction of the Court, as a federal tribunal. That distinction, so often recognized and applied in the use of writs of Prohibition, seems to have been overlooked by learned counsel in advancing the point above mentioned as a supposed objection of appellees to the federal jurisdiction over this cause invoked by the bill under review.

Re Cooper, 143 U. S. 506
Ex parte Penn., 109 U. S. 174
Re Fassett, 142 U. S. 484
State v. Southern Ry. Co., 100 Mo. 61

We do not wish unduly to prolong the argument. A careful reading of the bill we hope may be sufficient, with the aid of your Honors' extensive experience in expounding the law of federal jurisdiction, to solve the problem raised by this appeal. With all respect due to the able and experienced Judge of the trial court and to the amiable and learned counsel for appellees, we believe that the cause is one properly within the federal jurisdiction and that the decree of dismissal should be reversed for further proceedings upon the bill.

S. Mayner Wallace
Wm. R. Orthwein
Shepard Barclay
Solicitors and of Counsel for Appellant

St. Louis, Mo., March, 1915.

Supreme Court of the United States

OCTOBER TERM, 1914.

JOHN P. HERRMANN,
APPELLANT,
vs.
BENJAMIN F. EDWARDS, ET AL.,
APPELLEES.

No. 222.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

Brief for Appellees, W. K. Bixby, H. P. Knapp, Samuel C. Davis, Edward F. Goltra, Thomas H. McKittrick, Edward A. Faust, L. R. Carter, H. Brookings Wallace, F. C. Orthwein, E. T. Campbell, E. C. Simmons, G. O. Carpenter.

DANIEL N. KIRBY,
Counsel for H. P. Knapp, Samuel C. Davis, Edward F. Goltra, Thomas H. McKittrick, Edward A. Faust, W. K. Bixby.

EUGENE S. WILSON,
Of Counsel for W. K. Bixby.

JOSEPH W. LEWIS,
CHARLES M. RICE,
Counsel for L. R. Carter, H. Brookings Wallace, F. C. Orthwein.

JOHN F. LEE,
CHARLES M. POLK,
Counsel for E. T. Campbell, E. C. Simmons and G. O. Carpenter.

SUBJECT INDEX.

TABLE OF CASES CITED.

Supreme Court of the United States

OCTOBER TERM, 1914.

JOHN P. HERRMANN,
APPELLANT,
vs.
BENJAMIN F. EDWARDS, ET AL.,
APPELLEES.

No. 222.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

Brief for Appellees, W. K. Bixby, H. P. Knapp, Samuel C. Davis, Edward F. Goltra, Thomas H. McKittrick, Edward A. Faust, L. R. Carter, H. Brookings Wallace, F. C. Orthwein, E. T. Campbell, E. C. Simmons, G. O. Carpenter.

ARGUMENT.

The purpose of this suit is to recover from the two individual defendants, Messrs. Benjamin F. Edwards and George Lane Edwards, an alleged loss of over one million dollars, charged by the appellant to have been sustained by The National Bank of Commerce in St. Louis through the purchase by that Bank of the assets and business of the Fourth National Bank, also of

St. Louis. The bill alleges that Benjamin F. Edwards was President and George Lane Edwards a member of an important Committee of the Bank of Commerce; that both of said defendants were directors of both of said Banks; that said defendants, by reason of their stock ownership and control of the Board of Directors of the Fourth National Bank, were in control of the Fourth National Bank and were thereby enabled to and did cause the transfer of the assets and business of the Fourth National Bank to the Bank of Commerce, though said two defendants knew, or by the exercise of reasonable care would have known, that the alleged transaction would result in a large loss to The National Bank of Commerce.

The suit is brought by one stockholder on behalf of the Bank of Commerce, it having refused to institute the suit. No other stockholders have intervened. Besides the Messrs. Edwards, the defendants are the Bank of Commerce and all the persons who were directors in that Bank at the time of the institution of this suit. The bill alleges that the transaction was in violation of the National Banking Laws of the United States and a breach of trust on the part of the directors assenting thereto. The prayer of the bill is for an accounting from all the defendants, and for such relief as the Court may find to be proper.

The various appellees, defendants below, in their various motions to dismiss, alleged various grounds therefor, but the District Court dismissed the appellant's bill on the sole ground of lack of jurisdiction and refused to allow appellant to file an amended bill which, for the purposes of this argument, was similar

to the original bill. Although in the discussion of this matter we shall hereafter refer to the "bill," our remarks are intended to apply to both the original and amended bills. The only ground of jurisdiction claimed or set forth in the bill is that the suit is one arising under the laws of the United States. Throughout the bill run allegations that the alleged acts of the appellees were in violation of the National Banking Laws of the United States, and at paragraph 18 of the bill the appellant alleges:

> "Your orator further alleges that the decision and determination of the rights of the parties hereto can only be reached by the proper interpretation and construction of the National Banking Laws of the United States under which both of the Banking Associations herein mentioned were organized and incorporated."

The particular portions of the National Bank Act to be interpreted and construed are not set forth in the bill, and neither is there any showing in the bill or in the brief filed for the appellant of a dispute or controversy of any sort respecting the validity, construction or effect of any portion of the National Bank Act, or a show of the materiality of a construction of the National Bank Act. The appellant does not claim that there is any ground of Federal jurisdiction because the banks were incorporated under the Acts of Congress relating to National Banks.

Whether or not the District Court had jurisdiction of the cause must be largely determined by the provisions of Section 24, part 16, of the Act of March 3, 1911. This Act and the two previous Acts of the United States, relating to this subject, are set out below in

parallel columns, this being done in order that the Acts may be more easily compared.

Act of March 3, 1911, commonly called the New Judicial Act:

"Section 24: The District Courts shall have original jurisdiction as follows:

* * *

16th: Of all cases commenced by the United States or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the Court is held, under the provisions of title 'National Banks,' Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located."

Act of August 13, 1888, Sec. 4, (5th Fed. Stat. Annot. p. 193):

"That all national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; *and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State.* The provisions of this section shall not be held to affect the jurisdiction of the Courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank."

Act of July 12, 1882, Sec. 4:

"That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking associations may be doing business when such suits may be begun."

Sec. 4 of the Act of August 13, 1888 was identical with Sec. 4 of the Act of March 3, 1887, which it superseded. The portion of the Act of August 13, 1888, set out in italics, was omitted from the Act of March 3, 1911.

As stated by the appellant, the mere fact of incorporation under the Act of Congress would have been sufficient to have conferred jurisdiction in a case of this character previous to the passage of the Act of 1882.

Act of June 3, 1864, Ch. 106, Sec. 57;
Petri vs. Commercial Natl. Bank, 142 U. S. 644, 649;
Ex parte Jones, 164 U. S. 691, 692.

After the passage of the Act of July 12, 1882, national banks were placed upon precisely the same footing as individuals or other corporations with respect to the right to sue and be sued in the Federal Courts,

> "but the Act of 1882 provided in clear and unmistakable terms that the Courts of the United States should not have jurisdiction of such suits thereafter brought save in a few classes of cases, unless they would have jurisdiction under like circumstances of suits by or against a State Bank doing business in the same State with the National Bank. The provision is not that no such suit shall be brought by or against a National Bank in a Federal Court, but that a Federal Court shall not have jurisdiction. This clearly implies that such a suit can neither be brought nor removed here, because jurisdiction of such suits has been taken away unless a similar suit could be entertained by the same Court by or against a State Bank in like situation with the National Bank. Consequently,

so long as the Act of 1882 was in force, nothing in the way of jurisdiction could be claimed by a National Bank because of the source of its incorporation. A National Bank was by that statute placed before the law in this respect the same as a bank not organized under the laws of the United States."

Leather Mfrs. Bank vs. Cooper, 120 U. S. 778, 781;

This decision was followed by this Court in the following cases:

Petri vs. Commercial National Bank, 142, U. S. 644, 649;
Ex parte Jones, 164 U. S. 691, 693;
In re Chetwood, 165 U. S. 443, 459;
Continental Natl. Bank vs. Buford, 191 U. S. 119, 123.

Hence, as is shown by the decisions just cited, the jurisdiction of the Federal Courts over suits involving national banks or the liability of their officers or directors for alleged violation of the National Banking Act can no longer be asserted on the ground of the Federal origin of such banks; and in all such cases the Federal Courts have only such jurisdiction "as they would have in cases between individual citizens of the same State." Therefore, this suit, by which it is sought to hold officers and directors of national banks for the benefit of the bank for alleged losses caused by alleged official misconduct, could not properly be brought in the District Court merely because the banks were national banks and the duties and liabilities of the officers were fixed by the National Banking Act. Some other ground of Federal jurisdiction

must exist, and in this case no other Federal ground of jurisdiction is alleged or shown.

The precise question involved in the case at bar seems to have been determined clearly against the theory of the appellant in Whittemore vs. Amoskeag Natl. Bank, 134 U. S. 527, 529. The Whittemore case was before the Supreme Court on appeal from a decree of the United States Circuit Court, dismissing for want of jurisdiction a suit by Whittemore as a stockholder against a national bank, its directors and officers, to recover money alleged to have been lost by the bank through the acts of the directors and officers, which acts were alleged to have been in violation of the charter of the bank and of the laws of the United States. The suit was brought in the Federal Court of the district in which the plaintiff and all the defendants resided, the bill showing that the plaintiff and all the defendants resided in that district and that plaintiff was a stockholder suing for the benefit of the bank, to compel the directors to pay to the bank losses alleged to have been sustained by the bank through the illegal conduct of the directors. In deciding that the Circuit Court had no jurisdiction in such a case, this Court said, p. 529:

> "All the parties were citizens of the district of New Hampshire, and the bank was located therein, and in our judgment the Circuit Court for that district had no jurisdiction * * *. Prior to July 12, 1882 suits might be brought by or against National Banks in the Circuit Courts of the United States in the district where the banks were located, but by the Act of that date it was provided that 'the jurisdiction for suits hereafter brought

> by or against any association established under any law providing for the national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as and not other than the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking associations may be doing business when such suits may be brought.' "

At page 15 of his brief, the appellant attempts to distinguish the Whittemore case from the case at bar, by saying that in the Whittemore case "no question of the meaning or construction of the National Banking Laws was contended for by the complaining stockholder, nor was it made to appear that the operation of these laws might have conduced to affect the decision in the slightest way." In the Whittemore case the acts of the directors and officers were alleged to be in violation of the charter of the bank and the laws of the United States. Obviously the laws referred to were the banking laws of the United States. That case called for a construction of the laws of the United States just as much as the present case calls for a construction of the laws of the United States, for in the case at bar the only showing as to the necessity for a construction of any law of the United States is the conclusion of law therein stated by the appellant that the decision and determination of the rights of the parties could only be reached by a proper interpretation and construction of the National Banking Act.

As stated hereinbefore, the appellant's bill does not set forth the provisions of the National Banking Act,

which he alleges to have been violated, and the bill fails to show in any way that there existed any controversy whatsoever as to the validity, construction or effect of any portion of the National Banking Act. Therefore, the allegations in the Whittemore case and the present case are substantially identical; that is, that the acts of the officers and directors were in violation of the laws of the United States and for that reason the Federal Court had jurisdiction.

NO CHANGE IN LAW AFFECTING PRESENT QUESTION SINCE 1882.

On pages 16 and 17 of his brief, the appellant calls attention to the fact that the italicized portion of the Act of August 13, 1888, Sec. 4, has been omitted from the Act of March 3, 1911. In order that comparison may be easy, we have set out on page 8 of this brief the three Acts of the United States concerning the jurisdiction of the District Courts in cases concerning national banks.

The Act of 1882 provides that in actions by or against national banks, the jurisdiction "shall be the same as and not other than the jurisdiction for suits by or against *banks* not organized under the laws of the United States."

The Act of 1888 provides that national banks shall be deemed *citizens* of the States in which they are respectively located, and that in such cases the Federal Courts should not have any jurisdiction other than such as they would have in cases between individual *citizens* of the same State.

The Act of 1911 provides for Federal jurisdiction in certain specified cases and that for the purposes of *"all other actions"* national banks should be deemed citizens of the States in which they are respectively located.

We contend that the law, on the point under discussion, was not affected by any change from the Act of 1882, in either of the later Acts.

It will be noticed that in the first portion of paragraph 16 of Sec. 24 of the Act of March 3, 1911, the jurisdiction of the District Courts is extended to certain cases not provided for by the Act of August 13, 1888, and that after making provision for the additional jurisdiction in these cases, the Act of March 3, 1911 provides that in *all other actions* by or against national banks, they shall be deemed citizens of the States in which they are respectively located.

We respectfully submit that the only difference between the Acts of 1882 and 1888 was that under the earlier Act the Federal Courts only had jurisdiction of suits by or against national banks where they would have suits by or against *State banks,* whereas by the Act of 1888 the Federal Courts were given jurisdiction of suits by or against national banks only where they would have had jurisdiction of suits against individual *citizens* of the same State.

We further respectfully submit that the omission from the Act of 1911 of the italicized portion of the Act of 1888 was not intended to restore the conditions existing prior to the Act of 1882, and to give the Federal Courts jurisdiction merely because of the

fact that the two corporations were organized under the National Banking Laws. It seems clear that the Act of 1911, by giving jurisdiction in certain additional cases and providing that in all other cases the national banks should be deemed citizens of their respective States, only emphasizes the fact that, except in the cases in which the Federal jurisdiction was provided for, the Federal Court was intended to have jurisdiction of cases involving national banks only where it would have jurisdiction of a case involving an individual or citizen of the same State.

APPELLANT HAS FAILED TO SHOW ANY FEDERAL QUESTION INVOLVED.

We have heretofore shown that neither national banks, nor the stockholders thereof suing for the bank, have any rights in the Federal Court that would not be accorded to other corporations or individuals of the same State. Therefore, the appellant, though suing in behalf of himself and other stockholders of a national bank, has no standing in this Court, unless he has shown by his bill that there is a real and substantial dispute respecting the validity, construction or effect of the National Banking Act, and that the recovery depends on whether the right claimed will be defeated by one construction of the National Banking Act, or sustained by the opposite construction. In other words, two things are necessary to the existence of the Federal question; first, there must be an actual dispute between the parties as to the meaning of some law of the United States; second, the construction must be material to a determination of the case.

"A cause cannot be removed from a State Court simply because, in the progress of the litigation, it may become necessary to give a construction to the Constitution or laws of the United States. The decision of the case must depend upon that construction. The suit must in part at least arise out of a controversy between the parties in regard to the operation and effect of the Constitution or laws upon the facts involved."

Gold Washing. & W. Co. vs. Keys, 96 U. S. 199, 203.

"We have repeatedly held that 'when a suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution or laws of the United States upon the determination of which the result depends, it is not a suit arising under the Constitution or laws. And it must appear on the record by a statement in legal and logical form, such as is required in good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction of the Constitution or some law or treaty of the United States before jurisdiction can be maintained on this ground.' "

Defiance Water Co. vs. Defiance 191 U. S. 184, 190.

"The rule is firmly established that a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of some law of the United States upon the determination of which the result depends. And this must appear not by mere inference but by a distinct averment according to the rules of good pleading; not that matters of law must be pleaded as such, but that the es-

sential facts averred must show not as a matter of mere inference or argument, but clearly and distinctly that the suit arises under some Federal Law."

Hull vs. Burr, 234 U. S. 712, 720.

The case last cited came to this Court on appeal from a decree of the District Court sustaining a demurrer to the petition.

The following cases are to the same effect:

Schulthis vs. McDougal, 225 U. S. 561, 569;
Newburyport Water Co. vs. Newburyport, 193 U. S. 561;

Arbuckle vs. Blackburn, 191 U. S. 405;
W. U. Tel. Co. vs. Ann Arbor R. Co., 178 U. S. 239;
McCain vs. Des Moines, 174 U. S. 168;
New Orleans vs. Benjamin, 153 U. S. 411;
Tennessee vs. Bank, 152 U. S. 454;
Shreveport vs. Cole, 129 U. S. 36;
Carson vs. Dunham, 121 U. S. 421;
Germania Ins. Co. vs. Wisconsin, 119 U. S. 473;
Starn vs. New York, 115 U. S. 248;
Hartnell vs. Tilghman, 99 U. S. 547.

In his brief, (pages 8 and 9) the appellant states that the case at bar involves the propositions, "first, whether the National Bank of Commerce had power under the Acts of Congress to purchase, under the circumstances described, all of the capital stock and assets of the Fourth National Bank; and, secondly, whether, under those particular circumstances described, the Messrs. Edwards incurred liability to the

National Bank of Commerce for a breach of duty as officers of the Bank, under the Federal Law of its being."

These are evidently the two questions of construction of the National Banking Act which the appellant thought the District Court would have to pass upon.

We submit that the bill does not charge a purchase of the stock of the Fourth National Bank by the National Bank of Commerce. It seems to us to charge a purchase of the assets and business of the former by the latter, by the payment of a certain amount per share. We will assume for argument, however, that the bill charges that the shares of stock of the Bank were purchased.

There can exist no controversy as to the power of a national bank to purchase for investment the stock of another national bank. The question has been decided too often in this Court to any longer sanction doubt that if the National Bank of Commerce purchased the stock of the Fourth National Bank, such an act was ultra vires.

See—First National Bank vs. National Exchange Bank, 92 U. S. 122, 128;
California National Bank vs. Kennedy, 167 U. S. 362, 367;
Concord National Bank vs. Hawkins, 174 U. S. 364, 367;
First National Bank vs. Converse, 200 U. S. 425, 438.

If it be conceded that it was ultra vires for the National Bank of Commerce to purchase the stock of the Fourth National Bank, then the only other question

of law to be determined under the bill and under the showing in the appellant's brief is whether or not, under the particular circumstances described in the bill, the Messrs. Edwards incurred a liability to the National Bank of Commerce for their alleged breaches of duty as officers of the Bank, under the National Banking Act.

The bill alleges that the Messrs. Edwards, through their official positions as directors and officers of the two banks, and through their stock ownership and control of the two banks, knowing that the purchase of the assets of the Fourth National Bank would result in a loss of more than a million dollars to the National Bank of Commerce, or that by the exercise of reasonable care or caution they would have known that such a loss would ensue, were enabled to and did cause the entire assets and business of the Fourth National Bank to be transferred to the National Bank of Commerce, causing the latter a loss of over a million dollars.

Assuming that an individual liability of the Messrs. Edwards would result from such averments if proved, the right of recovery for such a fraud as alleged in the bill does not depend upon any particular provision of the National Banking Act, but upon the general principles of the law which make persons committing such frauds responsible to those injured to the extent of the damage caused by the fraud or neglect. It is obvious that no construction of the National Banking Act would be required in order to hold the two defendants, the Messrs. Edwards, liable for the alleged fraud, if the facts as stated in the bill were true, be-

cause no part of the Act is necessarily drawn into the determination of that issue.

The appellant, therefore, has failed to show either that there was an actual dispute as to the effect or construction of the National Banking Act, or that the construction urged by the appellant was material to a determination of the case. Hence the bill does not show the existence of a Federal question in this case, and it was properly dismissed by the District Court, and the action of the District Court was proper in refusing to allow the filing of an amended bill containing substantially similar allegations as the original bill.

The appellant may contend that, inasmuch as there is a controversy as to the construction to be given to the Act of March 3, 1911, there exists a Federal question. As that Act concerns *jurisdiction* and does not in any way confer upon any person *rights* which may be the basis of a cause of action, and as the Federal statute to be construed must determine the rights of plaintiff, as shown by the authorities we have heretofore cited, a controversy over a statute which merely confers jurisdiction in certain cases, does not in and of itself confer jurisdiction over the subject matter in controversy.

CASES CITED BY APPELLANT.

The appellant has cited many cases in his brief, and it might be said of them that they all may be either distinguished, are irrelevant, or are cases illustrating conceded propositions of law.

Osborn vs. United States Bank, 9th Wheaton, 738, and Pacific Railroad Removal Cases, 115 U. S. 1, cited by the appellant, are referred to in Ex parte Jones, 164 U. S. 691, 692. In the last mentioned case it was said that the two cases referred to had declared the doctrine that suits by or against corporations organized and existing under Acts of Congress were suits arising under the laws of the United States. It was further said, however,

> "But by the Act of 1882 and more recently by Sec. 4 of the Acts of March 3, 1887, and August 13, 1888, the privilege of suing and being sued under this clause was taken from national banks. * * * The section above cited from the Act of 1888 undoubtedly deprives these banks of the privilege of suing or being sued, except in cases where a diversity of citizenship would authorize an action to be brought."

The cases of—First National Bank vs. National Exchange Bank, 92 U. S. 122; First National Bank vs. Hawkins, 174 U. S. 364; First National Bank vs. Converse, 200 U. S. 425, were cited to show that a national bank has no power to invest in the stock of other national banks. The correctness of these decisions is unquestioned. Bank vs. Wade, 84 Fed. 10; Cockerill vs. Abeles, 86 Fed. 505; Cooper vs. Hill, 94 Fed. 582, and other cases were cited to show that officers of national banks may be personally liable for losses caused by their use of the funds of the bank for unauthorized purposes, as well as for culpable negligence and for fraudulent appropriation. These appellees do not dispute the correctness of the proposition of law stated.

The appellant states that the effect of the case of Whittemore vs. Bank, 134 U. S. 527, cited by us supra, has been very greatly limited by the later cases of Wyman vs. Wallace, 201 U. S. 230; Merchants National Bank vs. Wehrmann, 202 U. S. 295; International Trust Co. vs. Weeks, 203 U. S. 364.

In Wyman vs. Wallace, it appeared that the bank was in liquidation and the Court held that it had jurisdiction under the provisions of Section 2 of the Act of June 30, 1876, providing that in such cases, suits to enforce individual liabilities of the shareholders may be

> "by bill in equity in the nature of a creditor's bill brought by such creditor on behalf of himself and of all other creditors of the association against the shareholders thereof, *in any Court of the United States* having original jurisdiction in equity for the district in which such association may have been located or established."

In Merchants National Bank vs. Wehrmann, one of the material questions in the case, which was certified to the Supreme Court, was whether the bank had power under U. S. R. S. 5136-5137 to become liable for the debts of a partnership, the decision below being against the claim of the plaintiff in error. There can be no doubt but what in such case the jurisdiction was rightfully exercised.

In International Trust Co. vs. Weeks, the suit was brought by an agent for the shareholders of a bank in liquidation, and the Court said the action was clearly one to wind up the affairs of the bank. By the express provisions of the Acts of 1882, 1888 and 1911, such suits are within the original jurisdiction of the District Courts.

L. & N. R. R. Co. vs. Motley, 211 U. S. 149, was cited by appellant as showing that where the bill is based upon the laws of the United States, the suit arises under those laws. The facts in that case were that the plaintiff urged that the Federal Court had jurisdiction because of an anticipated defense which the plaintiff alleged was invalid under the Constitution of the United States. The Court held that it had no jurisdiction, and that "a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution."

Chicago Junction Ry. Co. vs. King, 222 U. S. 222, 223, was cited by appellant as holding that this Court has stated that the Federal Courts have jurisdiction of suits based upon the Safety Appliance Law. This Court did use the language, "by the pleadings the cause of action was based on the statute of the United States—the Safety Appliance Law—which gives jurisdiction." But by this language the Court meant that it had jurisdiction to review a judgment of the Circuit Court of Appeals, not that the District Court would have had original jurisdiction merely because an action was based on the provisions of the Safety Appliance Law. The question in the case was whether or not the judgment of the Circuit Court of Appeals was final under the Act of March 3, 1891, or whether a writ of error might be allowed by the Supreme Court from the judgment rendered by the Circuit Court of Appeals.

In St. L., I. M. & S. Ry. Co. vs. Taylor, 210 U. S. 281, the claims of the plaintiff were based on the provisions

of the Safety Appliance Law. The suit was instituted in the State Court and came to this Court from the State Supreme Court. No question seems to have been made but that the State Court had original jurisdiction.

L. & N. R. Co. vs. Finn, decided January 5, 1915, (Advance sheets, Supreme Court Reporter of February 1, 1915, page 146) was cited by the appellant on the general question of Federal jurisdiction. In that case the Railroad Company had attempted to change a rate. The Kentucky State Railroad Commission ordered the restoration of the old rate, and the Railroad Company sued in the Federal Court, alleging that the order of the Railroad Commission violated the "due process clause" of the Fourteenth Constitutional Amendment. Nothing could be clearer that such an allegation gave the Federal Court jurisdiction, as the constitutional rights of the Railway Company were in dispute and directly affected by the order of the Commission.

Many cases are cited by the appellant involving constructions of National Banking Laws and other laws of the United States, wherein it was held that the Federal Court had jurisdiction. These cases may well be answered in the language of this Court, in Shulthis vs. McDougal, 225 U. S. 561, 569:

> "A suit to enforce a right which takes its origin in the laws of the United States is not necessarily or for that reason alone one arising under those laws. For a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends."

We do not dispute that where there appears from the plaintiff's statement of the case to be a valid, substantial, meritorious controversy as to the effect or construction of a law of the United States, and the construction of such a law is material, and the result of the suit depends upon the construction, in such a case the Federal Court will have jurisdiction.

We do deny, however, that in this case there has been any such showing made, as is required by law, of the existence of a meritorious Federal question or a substantial or any controversy as to the effect or construction of a law of the United States, or the materiality of a construction of the National Bank Act to a determination of this case. We, therefore, say the decree of the Court below was correct and should be affirmed.

Respectfully submitted,

DANIEL N. KIRBY,
Counsel for H. P. Knapp, Samuel C. Davis, Edward F. Goltra, Thomas H. McKittrick, Edward A. Faust, W. K. Bixby.

EUGENE S. WILSON,
Of Counsel for W. K. Bixby.

JOSEPH W. LEWIS,
CHARLES M. RICE,
Counsel for L. R. Carter, H. Brookings Wallace, F. C. Orthwein.

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Counsel for E. T. Campbell, E. C. Simmons and G. O. Carpenter.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

JOHN P. HERMANN, *Appellant,*

vs.

BENJAMIN F. EDWARDS et al., *Respondents.*

Questions of Federal Jurisdiction.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF THE CASE.

On Behalf of Respondents Benjamin F. Edwards, George Lane Edwards and A. G. Edwards & Sons.

This is a suit instituted by appellant (hereinafter referred to as plaintiff), as a stockholder of the National Bank of Commerce in St. Louis (hereinafter referred to as Bank of Commerce) to recover from defendants Benjamin F. Edwards and George Lane Edwards a sum in excess of $1,000,000.00, alleged to have been lost to the said Bank of Commerce by reason of the purchase by that bank of the assets and business of the Fourth National Bank of St. Louis.

Plaintiff is the owner of 100 shares of the par value of $100.00 each, of the capital stock of the Bank of Commerce, which is capitalized for $10,000,000.00.

The defendants herein comprise the two banks above named and such persons as composed the directorate

of the Bank of Commerce at the time of the filing of the suit, and at which time all the parties to the suit resided in and were citizens of St. Louis, Missouri.

No money judgment is prayed against any defendant except the Edwards'.

We do not deem it necessary to here set forth the bill in full as we believe a clear understanding of the question raised may be reached by reference to the salient portions of it, to which we shall presently specifically refer.

The bill, in effect and substance, avers that defendant Benjamin F. Edwards was vice-president, defendant George Lane Edwards a director and one J. C. Van Blarcom was president of the Bank of Commerce, and that they owned and controlled 6,727 shares out of a total of 10,000 shares of stock in the Fourth National Bank and controlled the directors thereof, and that by reason of such ownership and control they caused the purchase and transfer of the assets and business of the Fourth National Bank to the Bank of Commerce, which resulted in loss to the last mentioned bank (Trans., p. 6).

The bill avers that this transaction was in violation of the national banking laws of the United States and constituted a breach of trust on the part of the directors in consenting thereto; that these acts constituted a violation of the trust reposed in the said B. F. and G. Lane Edwards, and that said acts were unlawful as being in violation of an alleged statute of the United States prohibiting one national bank from acquiring the assets of another national bank.

The bill, in sweeping terms, alleges that the rights of the parties can only be reached by an interpretation and construction of the national banking laws of

the United States; but no portions of the National Banking Act are set forth in the bill, nor is there any pretense in the bill that there is any dispute or controversy of any kind between the parties hereto respecting the construction or validity of any law.

The allegations of the bill on which the jurisdiction of this court is predicated are in general terms, as witnesseth paragraph 18 of the bill, which is as definite as any other of the allegations, and is as follows:

> "Your orator further alleges that the decision and determination of the rights of the parties hereto can only be reached by the proper interpretation and construction of the national banking laws of the United States under which both of the banking associations herein mentioned were organized and incorporated." (Tr., p. 9.)

The assets of the Fourth National Bank were purchased by the Bank of Commerce in December, 1906.

Plaintiff avers that "he does not know whether said National Bank of Commerce did or did not authorize said offer of purchase" (Tr., p. 6).

Plaintiff instituted this action on the 10th day of March, 1913. He avers that prior to the institution of the suit, to-wit, on the 25th day of February, 1913, he, by letter, requested the Bank of Commerce to institute appropriate proceedings for the amount demanded by him and that his letter of request was referred by the board of directors to a committee of the board (Tr., p. 9).

Plaintiff also avers that he "verily believes that said Bank of Commerce will take no action in the direction requested by said letter" (Tr., p. 9).

Plaintiff further avers that he brings this suit in his own behalf and invites all other stockholders of the

Bank of Commerce to join and participate with him as party plaintiff. No stockholder joined with him.

The cause came on in due course in the District Court. Motions to dismiss were filed by all defendants. These motions were based, chiefly, on the ground of the lack of jurisdiction of the District Court and that the bill failed to state any cause of action against the defendants, or any of them.

These motions to dismiss were sustained by the learned District Judge.

Plaintiff moved to set aside the order of dismissal, which was overruled.

Plaintiff offered to file an amended bill, and leave to do so was refused. He brought the case here in due course.

BRIEF OF THE ARGUMENT.

I.

The contention of plaintiff as we interpret it from his brief is that this court has jurisdiction in this case for two reasons: First, because the Bank of Commerce has no power under the Act of Congress to purchase the assets and stock and assume the liabilities of the Fourth National Bank, and that the solution of that question, therefore, arises under the laws of the United States, and, second, because under the law pertaining to national banks as amended March 3, 1911 (Judicial Code), the jurisdiction of district courts over national banks is enlarged.

Now, of these two questions in their order:

First, then, as to whether the record raises a federal question.

THE RECORD FAILS TO RAISE ANY FEDERAL QUESTION.

(*a*) Before a suit can be said to be one which arises under the laws of the United States, it must appear **from the record** that the suit is one which does really and substantially involve a **controversy** between the parties as to the effect and construction of the Constitution, laws or treaty of the United States, and plaintiff must affirmatively show by his record (which in this case is the bill of complaint) that there is a real and substantial dispute between him and the defendants, or some of them, respecting the validity, construction or effect of some federal law, and that recovery by him depends upon whether the rights claimed will be defeated by one construction of such law, or sustained

by another construction of it. Does plaintiff's bill meet these requirements? We submit it does not. On this very important matter the bill is couched in terms of the most general nature. No particular portion of the National Banking Act or of any federal law is set forth or referred to in the bill. It is not averred that there is any dispute or controversy of any sort respecting the validity, construction or effect of any federal law. The bill can be said to refer just as definitely to the first section of the first article of the Constitution of the United States or to the last enactment of the congressional body as it does to any other law. It is impossible to conceive language more vague or broader in its scope. Such a record, upon which this plaintiff must stand, does not answer the requirements of the law.

Let it be noted that he does not say that the **defendants are claiming** any right under the Constitution or laws of the United States **which he denies,** and thereby raise a controverted question. He does not ask this court to construe any law to which there is or can be any dispute between lawyers. So far as the record shows, there is no difference whatever between the parties hereto as to the construction of the National Banking Act of Congress or any other Act of Congress or any section of the Constitution. There is no suggestion of difference on these propositions. And if it be said that such a bill of complaint and that such a record as this raises a federal question, then we respectfully assert that all one has to do to raise a federal question and avail himself of the jurisdiction of the Federal District Court is to allege somewhere in his petition, in terms most vague, that "the rights of the parties hereto can only be reached by proper interpre-

tation and construction of the laws of the United States."

The citation of a few of the many authorities which sustain the foregoing rule may be helpful.

In the case of Western Union v. Ann Arbor Railroad, 178 U. S. 239, the Court said:

> "When a suit does not really and substantially involve a dispute or controversy as to the effect of the Constitution or laws of the United States upon the determination of which the result depends, it is not a suit arising under the Constitution or laws. And it must appear by the record by a statement in legal and logical form, such as is required in good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction of the Constitution or some law or treaty of the United States before jurisdiction can be maintained on this ground."

In the case of Catholic Mission v. Missoula County, 200 U. S. 126, the Supreme Court said:

> "There is nothing on the face of the complaint above set forth to show either the existence of any question involving the construction or application of the Federal Constitution, or that the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority was drawn in question. This must appear in the complaint by the statement in legal and logical form such as good pleading requires."

In the case of New Orleans v. Benjamin, 153 U. S. 411, the Court said:

> "The jurisdictional power extends to all cases in law and in equity arising under the Constitu-

tion. But these are cases actually and not potentially arising and jurisdiction cannot be assumed on mere hypothesis. In this class of cases it is necessary to the exercise of original jurisdiction by the Circuit Court that the cause of action should depend upon the construction and application of the Constitution and it is readily seen that cases in that predicament must be rare."

In the case of Therkauf v. Ireland, 27 Fed. 769, the Court said:

"But it does not appear that there is any disputed construction of any statute of the United States involved. It does not appear but that both parties agree upon the construction of the preemption laws. For all that appears from the facts alleged, the whole controversy may turn on the proof of the facts. There is nothing to show that any disputed question of construction will arise, and this must affirmatively be shown, in order to make it affirmatively appear that the court has jurisdiction. It might as well be claimed that it is a proper cause for jurisdiction by alleging that the plaintiff claims title by virtue of a patent issued by the United States without stating that there is any question arising upon a disputed construction of the patent, but in dispute as to its validity. The authorities are numerous to the effect that the record in this case does not affirmatively disclose a case over which the court has jurisdiction and that it is insufficient to sustain its removal."

In the case of Nelson v. Railway Company, 172 Fed. 478, the Court said:

"So in the case now before the court. For all that appears here, there may be no difference

whatever between the parties as to the proper construction as to this act of Congress. So far as can be seen from an examination of the declaration, the case is one where its determination will depend on the application of the facts to the law. There is not a suggestion to the declaration that there will be any difference to the parties as to the proper interpretation of the act in any of its phases. The whole question seems to be: Has the plaintiff stated, and can he prove, a cause for action coming up to the requirements of this act of Congress and entitle him to recover under it?"

The following cases are to the same effect:

Goldwashing & Water Co. v. Keys, 96 U. S. 199;
Railroad v. Steele, 167 U. S. 659;
Devine v. Los Angeles, 202 U. S. 13;
Schultis v. McDougal, 225 U. S. 561.

(*b*) The bill in this case is lacking in sufficient averments to raise a Federal question, but if the bill had specifically referred to some particular statute or law of the United States as being applicable to the questions of facts set forth in his bill, and sought to invoke the jurisdiction of the District Court on the ground that such statute or law was applicable and necessary to the solution of the questions of fact arising in the case, we submit that plaintiff would be in no better condition. And this, because this Court, on numerous occasions, has passed on all questions of law that can possibly arise on the facts set forth in this bill. And having heretofore decided such questions, the Federal question vanishes and jurisdiction cannot be obtained by asking this Court to again decide the same question.

Now, we do not think plaintiff's bill charges the pur-

chase of the stock of the Fourth National Bank by the Bank of Commerce. It does charge the purchase of the assets and the assumption of the liabilities. But plaintiff, in his brief, treats the subject as if such charge was made, and for the purposes of this appeal, we will treat it so. Starting, then, on that basis, we confidently state that there is and can be no controversy between lawyers as to the law that one national bank has no power to purchase the stock of another national bank. That question has long since been decided and put to rest by this court.

First National Bank v. National Bank Exchange, 92 U. S. 122;
California National Bank v. Kennedy, 167 U. S. 362;
Shaw v. German-American Bank, 199 U. S. 603;
First National Bank v. Converse, 200 U. S. 425;
Logan County National Bank v. Townsend, 139 U. S. 67.

This proposition having been decided by the Supreme Court long prior to the institution of this action, it follows that the right of the Bank of Commerce to purchase the stock of the Fourth National Bank does not raise a Federal question.

Brewer, J., very clearly expressed the law in the case of Kansas *ex rel.* v. Bradley, 26 Fed. 289, where he said:

> "When a proposition has been once decided by the Supreme Court it can no longer be said that in it there still remains a Federal question. More correctly it is said that there is no question, State or Federal."

Foster's Federal Practice, Vol. I, p. 59, states the determination as follows:

> "When a proposition has been once decided by the Supreme Court of the United States it can no longer be said that in it there remains a Federal question."

These authorities and others that might be cited conclusively establish that no Federal question is raised by reason of the alleged purchase of the stock of the Fourth National Bank by the Bank of Commerce.

(*c*) But another question remains to be considered under the bill and plaintiff's brief, namely, whether under the particular circumstances described in the bill the defendants, Edwards', incurred such a liability to the Bank of Commerce that it would be necessary to invoke the jurisdiction of the Federal Court in order to obtain an interpretation of the provisions of the Federal law applicable thereto. Before discussing the question as to whether the facts presented by this bill are such as to require the application of Federal laws to determine the rights of the parties hereunder, it may be well to stop long enough to inquire what charges are made against these defendants.

The gist of plaintiff's bill is based on the averment that the defendants, Edwards', and one Van Blarcom, deceased, while directors of the Bank of Commerce, purchased for it the assets of the Fourth National Bank at a price far in excess of the real value thereof; and that they either knew, or had ample opportunity to know, that such assets were not worth the price paid for them.

Varying the verbiage, the charge is that the Edwards', while directors of the Bank of Commerce, perpetrated a fraud upon it by purchasing the assets of

the Fourth National Bank in which they were interested, at a price greatly in excess of the real value. The charge, then, is plainly misconduct of these defendants in their official capacity as directors. Now, if the facts alleged in this bill are true (and for the purposes of this appeal we concede that they must be taken as true), it is too plain for argument that appellant would be entitled to recover. To take any other position would amount to monumental absurdity. There is no law of the United States or of any State or country that would sanction such conduct as is charged in this bill. To attempt to justify such acts as are alleged on the ground that the same were justified by law, or otherwise, would be to commit the grossest sort of nonsense and would be tantamount to taking a position that the National Banking Laws of the United States provide a means by which one who has been guilty of fraudulent breach of his trust as director may be protected from liability. It does not take a construction of the Federal laws to determins the rights of the parties, if these facts are true. The law defining the rights and liabilities of directors under such circumstances is older than the Federal laws of the United States. It is a part of the common law and common honesty and has for centuries been the law of every State of this union. It does not require the construction of the National Banking Act, or any other Act of Congress, to determine liability in such cases as this.

> "The liability of directors of a National Bank is substantially the same under the Banking Law as of the common law."
>
> Clews v. Barden, 36 Fed. 617.

This Court and so many others have so often decided that bank directors who use the assets of the bank

for their own enrichment and its impoverishment are answerable for such losses, that we deem it unnecessary to cite authorities to sustain the announcement of such well known rule.

It is obvious that the facts of this case involve the only question upon which a controversy can arise. The law, Federal or otherwise, bearing on the propositions involved under this bill, have long been settled and are uncontradicted. There is no Federal question in this case from any viewpoint, because

> "Where the facts only are in dispute and the Federal law governing the case is uncontradicted, the United States Court cannot take jurisdiction. When a legal question arising under the Constitution or a law or a treaty of the United States is decided by the Supreme Court, it ceases to be a Federal question."
>
> Myrtle v. Railroad, 177 Fed. 193;
> Austin v Gagen, 39 Fed. 626;
> Montana Ore Co. v. Barton Copper Co., 85 Fed. 367;
> Peabody Mining Co. v. Gold Hill Mining Co., 97 Fed. 657.

THE ACT OF MARCH 3rd, 1911, DOES NOT CONFER JURISDICTION ON DISTRICT COURT.

The fact that defendant banks were incorporated under the Acts of Congress relating to national banks does not give the District Court jurisdiction. Prior to the Act of July 12, 1882, the fact that one of the parties to a suit was a national bank was sufficient to confer jurisdiction. But after the passage of that act national banks were placed precisely on the same basis as regards the forum in which they might sue or be sued as other corporations or individuals. Since the

passage of that act the jurisdiction of the federal courts over suits by or against such banks cannot be asserted on the ground of their federal origin.

Leather Mfrs. Bank v. Cooper, 120 U. S. 778;
Whittemore v. Amoskeag Ntl. Bank, 134 U. S. 527;
Petri v. Commercial Ntl. Bank, 142 U. S. 644;
Ex parte Jones, 164 U. S. 693.

The fact, then, that two of the defendants were incorporated under the laws of the United States pertaining to the organization of national banking institutions does not aid the plaintiff. This question arose and was squarely passed upon by this court in the case of Whittemore v. Amoskeag Ntl. Bank, 134 U. S. 527. Whittemore brought suit in his own behalf and in behalf of such stockholders of the Amoskeag National Bank as might join therein. The suit was against the bank, six of its directors, the cashier and a former director. The bill alleged, in substance, that the complainant was the owner of five shares of the stock of the bank and that a firm which was adjudicated bankrupt was indebted to the bank in a certain sum, and that one of the members of said firm was likewise indebted to the bank; that said debtors offered a composition to their creditors and that the bank, by vote of its directors, appointed one of them agent in the bankruptcy proceedings and that said agent entered into an agreement with the member of the firm providing that the bank should furnish him with money to carry out the compromise agreed upon and in consideration of which he would pay the agent of said bank a sum equal to the sum due the bank, and that in pursuance of said agreement the bank advanced from its

funds a large sum, without security. It was specifically averred in the bill as follows:

> "That in pursuance of this agreement the bank advanced from its funds a large sum without security, in doing which the directors and officers violated their duties and obligations to the bank's stockholders, and their acts were **in violation of the charter of the bank and the laws of the United States.**"

The bill contained other allegations which it is unnecessary to note. It was demurred to by the respondents and the demurrer sustained by the District Court on the ground that the plaintiff could not maintain his bill because of his failure to bring himself within equity rule 94. The Supreme Court said:

> "All the parties were citizens of the District of New Hampshire, and the bank was located therein, **and in our judgment the Circuit Court for that district had no jurisdiction.** A motion to dismiss the appeal on this ground has heretofore been made, but was overruled, as this court undoubtedly has appellate jurisdiction to determine whether the Circuit Court had original jurisdiction. * * * As the Circuit Court had no jurisdiction to dismiss the bill upon another ground, we reverse its decree, with the direction to **dismiss the bill for want of jurisdiction.**"

The Whittemore case has been frequently cited with approval by this court.

In *Ex parte* Jones, 164 U. S. 693, this Court, after reviewing the various jurisdictional Acts of Congress relative to national banks and particularly the Act of August 13, 1888, decided that the Act of August 13, 1888, deprived national banks of the privilege of suing

and being sued in the United States circuit and district courts, except in cases where diversity of citizenship would authorize an action to be brought, and cited the Whittemore case as authority for that position.

In re Chetwood, 165 U. S. 457, was a case wherein Chetwood, on behalf of himself and other stockholders of a national bank, brought suit to recover judgment in the bank's favor for the alleged wrongful acts of the managing agent of the bank. The Court said:

> "Nor is it questioned that the suit was rightly brought in the State court."

Plaintiff attempts to distinguish the Whittemore case from the one at bar, but we fail to perceive the distinction attempted to be drawn. It was charged by Whittemore that the acts of the directors "**were in violation of the charter of the bank and of the laws of the United States**". That was a general charge, 'tis true, but is no more general than the charge made by the plaintiff in this case, and there was, therefore, a charge that the officers of the bank had violated the charter of the bank and the laws of the United States and the Court specifically held that such a case was not one arising under the laws of the United States and that the averments of that bill did not give the District Court jurisdiction to determine the issues.

But plaintiff seeks to avoid the force of these authorities by suggesting that the jurisdiction of the Federal courts in such cases has been enlarged by the Act of March 3, 1911, which provides:

> "Section 24: The District Courts shall have original jurisdiction as follows:
>
> "16th: Of all cases commenced by the United

States or by direction of any officer thereof against any national banking association, and cases for winding up the affairs of any such bank, and of all suits brought by any banking association established in the district for which the Court is held under the provisions of title 'National Bank, Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction', as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the states in which they are respectively located."

Now, it will be noticed that the first portion of paragraph 16th of Section 24 of the Act of March 3, 1911, extends the jurisdiction of the District Courts to certain cases not theretofore provided for. By the law as it now stands, the District Courts have original jurisdiction of the following cases:

1. All cases commenced by the United States or by direction of any officer thereof against any national banking association.
2. Cases for winding up the affairs of any national bank.
3. All suits brought by any banking association established in the district for which the court is held under the provisions of title, "National Bank, Revised Statutes, to enjoin the Comptroller of the Currency, or any Receiver acting under his direction", as provided by said title.

The act, after specifically fixing the jurisdiction of the District Court in the certain cases above enumerated, then provides:

> "That all national banking associations established under the laws of the United States **shall, for the purposes of all other actions** by or against them, real, personal or mixed, and all suits in equity, **be deemed citizens of the states** in which they are respectively located."

It seems clear to us that the Act of 1911, by specifying jurisdiction of the District Courts in the certain cases therein enumerated, that such specification excludes the jurisdiction of such courts in all other cases and that the maxim *expressio unis est exclusio alterius* applies.

If the statute is to be construed as contended for by plaintiff, then there would have been little use for the lawmaking body to have specifically indicated the cases in which the District Courts should have original jurisdiction, and the legislative intent could have been clearly expressed by simply stating that the District Courts shall have original jurisdiction of all cases wherein national banking associations are parties, and would have been so expressed if that had been the intention of the lawmaking body.

NEITHER THE AMENDED NOR THE ORIGINAL BILL STATE A CAUSE OF ACTION.

This is a stockholders' bill. The rules and decisions of this Court prescribe what such bill shall contain. Rule 27 of this Court provides:

> "Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share

had devolved on him since by operation of law, and that the suit is not a collusive one to confer on a Court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action, or the reason for not making such effort."

Plaintiff's bill fails to comply with the last clause of the foregoing rule. In paragraph 16 of his bill he states that he has made repeated demands on the Board of Directors of the Bank of Commerce to bring this suit and that the directors have failed and neglected to bring it. And in paragraph 19 he states that on the 25th day of February, 1913, he requested said Board to forthwith institute appropriate proceedings to recover the alleged loss to the bank by the transaction. This letter was written just thirteen days prior to the institution of the suit.

These constitute the only allegations made with reference to plaintiff's efforts to procure action by the Board of Directors. He does not state that he made any request of any kind to the stockholders, or to any of them, to institute this suit. He does say that he believes the directors will not institute it. It was incumbent on him, in order to comply with the foregoing rule, to set forth with particularity that he made effort to secure such action by the shareholders and also the cause of his failure to obtain such action by the shareholders, and if he made no such effort then it was incumbent on him to state the reason for not making it. His bill utterly fails to allege any requests of any kind

to the shareholders, and fails to allege any reason for not making such effort, and, therefore, fails to comply with the rule of this Court, and fails to state a cause of action under said rule and under the decisions. He had ample opportunity to make a request of the stockholders for the reason that the transaction of which he complains was had on the 12th day of December, 1906, and between that time and the filing of his suit seven annual meetings of the stockholders had been held.

In the case of Hawes v. Contra Costa Water Co., 104 U. S., at page 460, *l. c.*, this Court said:

> "But, in addition to the existence of grievances which call for this kind of relief, it is equally important that before the shareholder is permitted in his own name to institute and conduct a litigation which usually belongs to the corporation, he should show, to the satisfaction of the Court, that he has exhausted all the means within his reach to obtain within the corporation itself the redress of his grievances, or action in conformity to his wishes. He must make an earnest, not a simulated effort, with the managing body of the corporation, to induce remedial action on their part, and this must be made apparent to the Court. If time permits, or has permitted, he must show, if he fails with the directors, that he has made an honest effort to obtain action by the stockholders as a body, in the matter of which he complains. And he must show a case, if this is not done, where it could not be done, or it was not reasonable to require it."

The following decisions are to the same effect as the Hawes case, *supra*:

Taylor v. Holmes, 127 U. S. 489;
Dimpfel v. Railroad, 110 U. S. 29;
Detroit v. Dean, 106 U. S. 537.

We, therefore, pray that the decree of the District Court be affirmed.

SAM B. JEFFRIES,
C. D. CORUM,
Solicitors and of Counsel for Respondents, Benjamin F. Edwards, George Lane Edwards and the A. G. Edwards & Sons Brokerage Company.

St. Louis, March 13, 1915.

prevailing for many years as to confer jurisdiction on the Federal courts of all suits by and against national banks will not be presumed in the absence of clear manifestation of such purpose.

THE facts, which involve the jurisdiction of the District Court of a suit against a national bank and its directors, under the Act of August 13, 1888, and paragraph 16, § 24 of the Judicial Code, are stated in the opinion.

Mr. Shepard Barclay, Mr. S. Mayner Wallace and *Mr. Wm. R. Orthwein* for appellant, submitted:

It was error to dismiss the bill for supposed want of Federal jurisdiction as the powers of the banks under Federal laws were directly involved.

Where any ingredient of the case is Federal, that jurisdiction is applicable.

The principles of other decisions disclose jurisdiction over the case in this bill.

The refusal of leave to amend was also error.

The suit arises under the laws of the United States.

In support of these contentions, see *Abbott* v. *Bank*, 175 U. S. 409; *American Nat. Bank* v. *Tappen*, 174 Fed. Rep. 431; *Bailey* v. *Mosher*, 63 Fed. Rep. 488; *Bank* v. *Wade*, 84 Fed. Rep. 10; *Chicago Railway* v. *King*, 222 U. S. 222; *Citizens' National Bank* v. *Appleton*, 216 U. S. 196; *Cockrill* v. *Abeles*, 86 Fed. Rep. 505; *Cohens* v. *Virginia*, 6 Wheat. 379; *Cooke* v. *Avery*, 147 U. S. 375; *Cooper* v. *Hill*, 94 Fed. Rep. 582; *First Nat. Bank* v. *Converse*, 200 U. S. 425; *First Nat. Bank* v. *Hawkins*, 174 U. S. 364; *First Nat. Bank* v. *Nat. Exch. Bank*, 92 U. S. 122; *Huff* v. *Bank*, 173 Fed. Rep. 335; *International Trust Co.* v. *Weeks*, 203 U. S. 364; *Larabee* v. *Dolley*, 175 Fed. Rep. 365; *Lesser* v. *Gray*, 236 U. S. 70; *Louis. & Nash. R. R.* v. *Finn*, 235 U. S. 601; *Louis. & Nash. R. R.* v. *Mottley*, 211 U. S. 149; *Merchants' Bank* v. *Wehrmann*, 202 U. S. 295; *Milkman* v. *Arthe*, 213 Fed. Rep. 642; *Os-*

born v. *Bank of United States*, 9 Wheat. 822; *Pacific Railroad Removal Cases*, 115 U. S. 12; *Petri* v. *Commercial National Bank*, 142 U. S. 644; Rev. Stat.,§§ 5136, 5151, 5220; 4 Fed. Stats. Ann., p. 248; *Tennessee* v. *Davis*, 100 U. S. 257; *Tex. & Pac. Ry.* v. *Howell*, 224 U. S. 577; *Whittemore* v. *Bank*, 134 U. S. 527; *Wyman* v. *Wallace*, 201 U. S. 230.

Mr. C. D. Corum, with whom *Mr. Sam B. Jefferies*, *Mr. Daniel N. Kirby*, *Mr. Eugene S. Wilson*, *Mr. Joseph W. Lewis*, *Mr. Charles M. Rice*, *Mr. John F. Lee* and *Mr. Charles M. Polk* were on the brief, for appellees:

Prior to 1882, the District Court had jurisdiction of all cases by or against national banks, see Act of June 3, 1864, c. 106, § 57; *Petri* v. *Commercial Natl. Bank*, 142 U. S. 644, 649; *Ex parte Jones*, 164 U. S. 691, 692.

After the Act of 1882, the District Court only had jurisdiction of actions by or against national banks where it would have had jurisdiction of actions by or against citizens of the respective States. *Leather Mfrs. Bank* v. *Cooper*, 120 U. S. 778, 781; *Petri* v. *Commercial Natl. Bank*, 142 U. S. 644, 649; *Ex parte Jones*, 164 U. S. 691, 692; *In re Chetwood*, 165 U. S. 443, 459; *Continental Natl. Bank* v. *Buford*, 191 U. S. 119, 123.

The District Court has no jurisdiction in a suit against the directors of national banks for acts alleged to have been in fraud and in violation of the National Bank Acts, where there is not a substantial and meritorious controversy as to the construction or effect of some provision of the National Bank Act. *Whittemore* v. *Amoskeag Bank*, 134 U. S. 527, 529.

There has been no change in the law affecting the jurisdiction of District Courts in suits by or against national banks since the Act of 1882. Acts of July 12, 1882, § 4; August 13, 1888, § 4; March 3, 1911, § 24, p. 16.

In order that the District Court may have jurisdiction

HERRMANN *v.* EDWARDS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 222. Argued April 14, 1915.—Decided June 14, 1915.

The rule that, in the absence of diversity of citizenship, jurisdiction of the District Court over a suit depends upon whether there is a Federal cause of action stated in the bill applies to suits against national banks and their directors.

Under the act of August 13, 1888, the Federal courts have not, in the absence of diverse citizenship, jurisdiction of a suit by a stockholder against directors of a national bank and the bank to compel the directors to reimburse the bank for wrongfully investing its funds, nor has the District Court any jurisdiction of such a suit under paragraph 16 of § 24, Judicial Code.

The intention of Congress to make such a radical change in the rule

in a case involving a construction of the National Bank Act, the bill must show that there was an actual meritorious dispute, and that the result of the suit depended upon the construction of the act. *Gold Washing Co.* v. *Keys*, 96 U. S. 189, 203; *Defiance Water Co.* v. *Defiance*, 191 U. S. 184, 190; *Hull* v. *Burr*, 234 U. S. 712, 720; *Shultis* v. *McDougal*, 225 U. S. 561, 569; *Water Co.* v. *Newburyport*, 193 U. S. 561; *Arbuckle* v. *Blackburn*, 191 U. S. 405; *West. Un. Tel. Co.* v. *Ann Arbor R. R.*, 178 U. S. 239; *McCain* v. *Des Moines*, 174 U. S. 168; *New Orleans* v. *Benjamin*, 153 U. S. 411; *Tennessee* v. *Bank*, 152 U. S. 454; *Shreveport* v. *Cole*, 129 U. S. 36; *Carson* v. *Dunham*, 121 U. S. 421; *Germania Ins. Co.* v. *Wisconsin*, 119 U. S. 473; *Stern* v. *New York*, 115 U. S. 248; *Hartnell* v. *Tilghman*, 99 U. S. 547.

It is *ultra vires* for national banks to purchase for investment stocks of other national banks. *First Natl. Bank* v. *Natl. Exchange Bank*, 92 U. S. 122, 128; *California Natl. Bank* v. *Kennedy*, 167 U. S. 362; *First Natl. Bank* v. *Hawkins*, 174 U. S. 364; *Shaw* v. *German-American Bank*, 199 U. S. 603; *First Natl. Bank* v. *Converse*, 200 U. S. 425.

No Federal question is disclosed in either the original or the amended bill. See cases *supra*.

In support of these contentions see also *Austin* v. *Gagen*, 39 Fed. Rep. 626; *Catholic Mission* v. *Missoula County*, 200 U. S. 126; *Crews* v. *Barden*, 36 Fed. Rep. 617; *California Natl. Bank* v. *Kennedy*, 167 U. S. 362; *Devine* v. *Los Angeles*, 202 U. S. 13; *Dimpfel* v. *Railroad*, 110 U. S. 29; *Detroit* v. *Dean*, 106 U. S. 537; Foster's Federal Practice, Vol. 1, p. 59; *Hawes* v. *Contra Costa Water Co.*, 104 U. S. 450; *Kansas* v. *Bradley*, 26 Fed. Rep. 289; *Logan County Bank* v. *Townsend*, 139 U. S. 67; *Myrtle* v. *Railroad*, 177 Fed. Rep. 193; *Montana Ore Co.* v. *Barton Copper Co.*, 85 Fed. Rep. 367; *Nelson* v. *Railway Co.*, 172 Fed. Rep. 478; *Peabody Mining Co.* v. *Gold Mining Co.*, 97 Fed. Rep. 657; *Railroad Co.* v. *Steele*, 167 U. S. 659; *Terkauf* v. *Ireland*, 27 Fed. Rep. 769; *Taylor* v. *Holmes*, 127 U. S. 489.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

If the statutes which control the question for decision in this case and their significance as settled by the decisions of this court long prior to the commencement of this suit be at once stated, it will serve to clarify and facilitate the analysis of the issue to be decided. Section 4 of the act of Congress of August 13, 1888, c. 866, 25 Stat. 433, provided as follows (p. 436):

"That all national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; ~~and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State~~. The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank." (A line is drawn through certain words for reasons hereafter referred to.)

This section was but a reënactment of an identical provision contained in § 4 of the act of Congress of March 3, 1888 (c. 373, 24 Stat. 552, 554) and again this was but the reënactment of an identical provision contained in § 4 of the act of July 12, 1882 (c. 290, 22 Stat. 162, 163).

Under the provisions of the Act of 1882 long prior to their reënactment in 1888 it had been conclusively established that because a corporation was a national bank created under an act of Congress gave it no greater right to remove a case than if it had been organized under a state law. *Leather Manufacturers' Bank* v. *Cooper*, 120 U. S. 778. And after the reënactment in 1888 a case

(*Whittemore* v. *Amoskeag National Bank*, 134 U. S. 527) was decided involving a controversy controlled by the Act of 1882 but the decision of which was necessarily also an interpretation of the Act of 1888, as the two were identical. The case was this: A stockholder of a national bank on his own behalf and of all others who might join, sued in a Circuit Court of the United States, the directors of the bank, making the bank also a party defendant, to hold the directors liable for an act of alleged maladministration committed by them. The prayer was that the directors be decreed to pay back to the bank for the benefit of its stockholders the amount of money lost by the bank as the result of their misconduct. There was no diversity of citizenship upon which the jurisdiction of the Circuit Court could rest and therefore its power to entertain the case rested alone upon the fact that the defendant bank was a national banking association, that the other defendants were directors of such an association and that the liability sought to be enforced arose from misconduct on their part in relation to their duties to the bank. The Circuit Court, not passing upon these questions, dismissed the bill because there had not been a compliance with Equity Rule 94. But this court concluding that the Act of 1882 excluded jurisdiction as a Federal court, the action of the court below in dismissing for want of compliance with the Equity Rule was reversed and the case remanded with directions to dismiss for want of jurisdiction as a Federal court. Of course this conclusion involved deciding that in the absence of a Federal controversy concerning the interpretation of some provision of the National Bank Act raising what might be considered by analogy a Federal question in the sense of § 709, Rev. Stat., a mere assertion of liability on the part of directors for wrongs for which they might be responsible at common law, afforded no basis for jurisdiction. Indeed, that this conception was the one upon which the decision was

rested is shown by the fact that in the course of the opinion it was pointed out that neither the provisions of § 5209, Rev. Stat., providing for criminal punishment of directors of national banks in certain cases, nor § 5239, Rev. Stat., giving certain powers to the Comptroller of the Currency in certain instances, were involved in the cause of action so as to give rise to a Federal question upon which the jurisdiction could be based.

This ruling during the many years which have elapsed has never been questioned and the fundamental principle upon which it rested has been applied in various aspects. *Petri* v. *Commercial Bank*, 142 U. S. 644; *Ex parte Jones*, 164 U. S. 691, 693; *Continental National Bank* v. *Buford*, 191 U. S. 119; *Yates* v. *Jones National Bank*, 206 U. S. 158; *Thomas* v. *Taylor*, 224 U. S. 73.

By § 24 of the Judicial Code of 1911 the jurisdiction of the district courts is provided for. The sixteenth paragraph of that section gives those courts original jurisdiction as follows:

"Sixteenth. Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title 'National Banks,' Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all National banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located."

The statutory law with the concluded interpretation affixed to it to which we have referred being in force, this suit was commenced in the court below in March, 1913.

The complainant, as a stockholder in the National Bank of Commerce, a national banking association established and carrying on business in St. Louis, Missouri, on his own and on behalf of all other stockholders who might elect to join in the suit, sought recovery from the defendants, George Lane Edwards and Benjamin F. Edwards, of an amount exceeding $1,300,000 for the benefit of the complainant and the other stockholders of the National Bank of Commerce upon substantially the following grounds: That the defendants as directors and officers of the National Bank of Commerce, having also a large interest, direct or indirect, in another national bank known as the Fourth National Bank, had devised a scheme by which the National Bank of Commerce would buy out the Fourth National Bank for a sum utterly disproportionate to the value of the property and rights to be transferred, thus despoiling the National Bank of Commerce and its stockholders and wrongfully enriching the Fourth National Bank and its stockholders to the extent of the inordinate price which was paid. It was charged that this scheme of fraud and wrong was a breach of trust on the part of the two main defendants, and was accomplished by them by a wrongful and fraudulent exercise and perversion of the power possessed by them over the business of the National Bank of Commerce. It was alleged that demand had been made upon the directors and officers of the National Bank of Commerce to sue the main defendants for a recovery of the amount by which they had wrongfully enriched themselves to the detriment and injury of the National Bank of Commerce and its stockholders, but they had refused to do so and the directors of the bank were joined as defendants. The prayer was for an accounting, for a fixing of the amount by which the National Bank of Commerce had been despoiled and for a decree against the defendants to pay the sum so fixed for the benefit of the stockholders of the National Bank of Commerce. There

was no diversity of citizenship and jurisdiction over the suit therefore depended upon whether there was a Federal cause of action stated upon which the authority of the court to entertain the cause could be based.

Except in so far as it may be conceived that a Federal cause of action giving jurisdiction existed because of the averment that the National Bank of Commerce was a United States corporation and the reiterated charges of wrongdoing and breach of trust by the two main defendants there was nothing in the bill from which it could be considered that a Federal right adequate to give jurisdiction was asserted unless it be a passage from the bill which we quote:

"The acts and transactions of said defendants Benjamin F. Edwards and George Lane Edwards in the matter of the transfer of the assets and property of the Fourth National Bank to the National Bank of Commerce were contrary to the laws of the United States and beyond the powers, under the acts of Congress in such case made and provided, of the National Bank of Commerce as an incorporated banking association under the laws of the United States, and that the acts and doings of the said Benjamin F. Edwards and George Lane Edwards in promoting, effecting and executing the transfer of the assets, and property of the Fourth National Bank, aforesaid, to the National Bank of Commerce were in violation of the National Banking laws of the laws governing said banking institutions, and were furthermore a breach of trust on the part of said Benjamin F. Edwards and George Lane Edwards as directors of the Bank of Commerce, and the facts and circumstances of their interest in the Fourth National Bank as stockholders and otherwise render their action as directors in the National Bank of Commerce in St. Louis in promoting, effecting, and executing the transfer of the assets and property of the Fourth National Bank to the National Bank of Commerce, a breach of

trust, in that said defendants, Benjamin F. Edwards and George Lane Edwards, as directors of the National Bank of Commerce in St. Louis, were in duty bound to execute the trust which said office provided, in such a manner as not to promote their own pecuniary and personal interest; and therefore their acts as aforesaid, were in violation of the National Banking laws of the United States as well as contrary to equity and good conscience, and for the consequences and damages resulting therefrom said Benjamin F. Edwards and George Lane Edwards were and are liable to the National Bank of Commerce for all damages ensuing on account thereof."

There were demurrers for want of jurisdiction which were maintained and the bill was dismissed and the case is here on a direct appeal upon the theory that the power of the court as a Federal court to entertain the cause is involved and that that single question is to be determined.

It is apparent that the general statements made in the bill to the effect that Federal considerations were essential to the determination of the cause of action were but conclusions of law affording no jurisdiction apart from the right to entertain the cause which would arise from the substantive and essential facts upon which the bill was based. Indeed when the averments of the bill are analyzed there is no escape from the conclusion that the jurisdiction to entertain it could not have been exerted without disregarding the plain letter of the statute in force since 1882. In fact this inevitable result does not depend upon the mere text of the statutes referred to since there is an absolute legal identity between this and the *Whittemore Case* and that case hence forecloses every contention here relied upon.

But it is said that conceding these conclusions inevitably result from the statute law as it existed prior to the Judicial Code, the Judicial Code has made a radical change in the law which now requires a different interpretation.

But we think the contention on the face of the statute is without foundation and that a brief consideration of the text of the Act of 1888 and of par. 16 of § 24 of the Judicial Code will make this clear.

The proposition rests upon the omission from the Judicial Code of the certain words in the Act of 1888 through which in the quotation which we have previously made a line has been passed. But when par. 16 of § 24 of the Judicial Code and § 4 of the Act of 1888 are considered together, the omission of the words referred to serves at once to destroy the proposition here relied upon for these reasons: Section 4 of the Act of 1888, as will be seen, opened with the provisions which excluded national banks from the Federal jurisdiction which otherwise would have attached to controversies concerning them. This being done, the statute proceeded to provide that the exclusion previously specified should not include certain classes of controversies which it was deemed best should come under the Federal jurisdiction, thus leaving those classes of cases under the general rule, since they were carved out by the last clause of the section from the provisions as to exclusion which were found in the first. In reënacting these provisions of the Act of 1888 in par. 16 of § 24 of the Judicial Code, obviously to make the purpose of the reënacted statute clearer, just the opposite form of statement was resorted to, since paragraph 16 opens by conferring Federal jurisdiction only in those classes of cases which were kept within that jurisdiction by the concluding clause of § 4 of the Act of 1888, and hence no jurisdiction was given as to the other classes of cases which were excluded from such jurisdiction by the Act of 1888. The reënacted section in other words, instead of generally stating what was excluded from jurisdiction and then carving out exceptions, as was done in the Act of 1888, gave jurisdiction only in the cases where it was intended to give it and then proceeded to declare that in all other cases within the

contemplation of the section there should be no jurisdiction, thus making the lines clear and broad and leaving no room for controversy or doubt. Aside from this it is to be moreover observed that the intention of Congress to make by the adoption of the Judicial Code so radical a change from the rule which had prevailed for so long a period is not to be indulged in without a clear manifestation of such purpose. Besides, as there is no ground for distinguishing between the restrictions as to jurisdiction imposed by par. 16 of § 24, it must follow that the argument now made based upon the omission of the words which were found in the Act of 1888 would apply to all of paragraph 16 and therefore none of the restrictions as to jurisdiction in that paragraph would be operative. Thus in both aspects the contention must come to this: that on the one hand because the provisions of paragraph 16 are comprehensively all-embracing, they must be held to be restrictive and on the other hand, that because the provisions of the Act of 1888 were reënacted, they were repealed.

As it follows that the court below was right in dismissing the bill for want of jurisdiction as a Federal court to consider it, its decree is therefore

Affirmed.